

United States  
Circuit Court of Appeals

For the Ninth Circuit.

HON WON CHONG and GEE SUE TOM,  
Plaintiffs in Error,  
vs.

UNITED STATES OF AMERICA,  
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
First Division.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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HON WON CHONG and GEE SUE TOM,  
Plaintiffs in Error,  
vs.

UNITED STATES OF AMERICA,  
Defendant in Error.

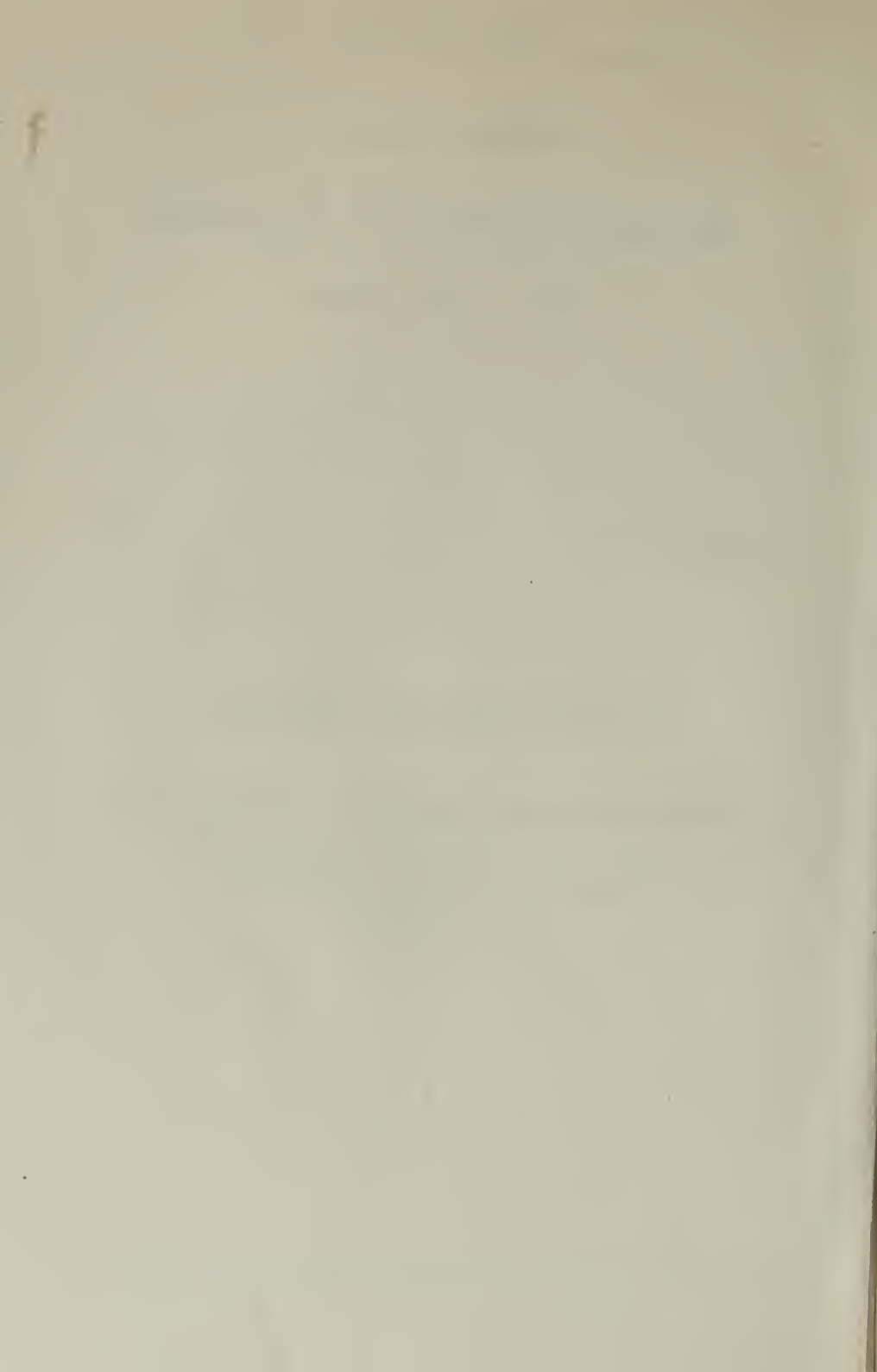
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Transcript of Record.

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Upon Writ of Error to the Southern Division of the  
United States District Court of the  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

For Defendant and Plaintiff in Error—Hon Won Chong:

ROY L. DAILY, Esq., San Francisco.

For Defendant and Plaintiff in Error—Gee Sue Tom:

C. A. A. McGEE., Esq., and J. H. SAPIRO, Esq., San Francisco.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, S. F.

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In the Southern Division of the District Court of the United States, Northern District of California, First Division.

11,132 and 11,785.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, etc., and GEE SUE TOM,  
etc.,

Defendants.

**Praeipie for Transcript on Writ of Error.**

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error to include the following papers and proceedings: Indictment in case No. 11,132.

Indictment in case No. 11,785.

Minute orders of the following dates: July 6th  
and Oct. 11, 1922, March 22, 23, 27, 28, April  
7, 1923.

Verdict.

Motion in arrest of judgment.

Judgment.

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Bond for costs on appeal.

Petition for writ of error.

Assignment of errors.

Order allowing writ of error.

Bill of exceptions.

This praecipe.

C. A. A. McGEE and

J. H. SAPIRO,

Attorneys for Defendant Gee Sue Tom.

R. L. DAILY,

Attorneys for Defendant Hon Wong Chong.

[Endorsed]: Filed Aug. 9, 1923. Walter B.  
Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[1\*]

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

**(Indictment—No. 11,132.)**

At a stated term of said Court begun and holden  
at the city and county of San Francisco within and

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\*Page-number appearing at foot of page of original certified Trans-  
script of Record.

for the Southern Division of the Northern District of California on the first Monday of March in the year of our Lord one thousand nine hundred and twenty-two,—

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths present: THAT

HON WON CHONG, *alias* F. T. Henry, and  
GEE SUE TOM, *alias* Gee Toy,

hereinafter called the defendants, heretofore, to wit, on or about May 1, 1922, at San Francisco, in the Southern Division of the Northern District of California then and there being, did then and there unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, with, between and among themselves, and with divers other persons to the grand jurors aforesaid, unknown, to commit the acts made offenses and crimes by the laws of the United States, to wit, the Act of Congress of December 17th, 1914, as amended February 24th, 1919, that is to say: The said defendants, did, at the time and place aforesaid, knowingly, unlawfully, wilfully, and feloniously conspire, combine, confederate and agree together, with, between and among themselves, and with divers other persons to the grand jurors aforesaid, unknown, to unlawfully, wilfully and feloniously possess certain narcotic drugs, to wit, smoking opium, cocaine, and morphine which said narcotic drugs did not then and there bear and have affixed thereon appropriate tax-paid stamps as required by the aforesaid act of Congress. [2]

That said conspiracy, combination, confederation and agreement between the said defendants and the said divers other persons whose names are as aforesaid, to the grand jurors aforesaid, unknown, was continuously, throughout all of the time from and after the said 1st day of May, 1922, and at all of the times in this indictment mentioned and referred to, and particularly at the time of the commission of the overt act in this indictment hereinafter set forth, in existence and process of execution.

And the grand jurors aforesaid, on their oaths aforesaid, do further state, that in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said defendants, and each of them, did, on or about May 1, 1922, at San Francisco, in the Southern Division of the Northern District of California then and there being, unlawfully, wilfully and feloniously possess certain packages of narcotic drugs, to wit, 10-5 tael cans of smoking opium, 8 ounces of cocaine and 5 boxes of morphine, one ounce each, which said packages of narcotic drugs did not then and there bear and have affixed thereon appropriate tax-paid stamps as required by the aforesaid act of Congress.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the

statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,  
United States Attorney.  
By GROVE J. FINK,  
Asst. U. S. Attorney.

[Endorsed]: A true bill.

H. K. MOFFITT,  
Foreman.

Presented in open court and ordered filed May 16, 1922. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [3]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

**Indictment—No. 11,785.**

At a stated term of said Court begun and holden at the city and county of San Francisco within and for the Southern Division of the Northern District of California on the second Monday of July in the year of our Lord one thousand nine hundred and twenty-two,—

The grand jurors of the United States of America, within and for the Division and District aforesaid, on their oaths present: THAT

HON WON CHONG, *alias* F. T. Henry, and GEE SUE TOM, *alias* Gee Toy,  
hereinafter called the defendants, heretofore, to

wit, on or about May 1, 1922, at San Francisco, in the Southern Division of the Northern District of California then and there being, did then and there unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, with, between and among themselves, and with divers other persons to the grand jurors aforesaid, unknown, to commit the acts made offenses and crimes by the laws of the United States, to wit, the Act of Congress of December 17th, 1914, as amended February 24th, 1919, that is to say: The said defendants did, at the time and place aforesaid, knowingly, unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, with, between and among themselves, and with divers other persons to the grand jurors aforesaid, unknown, to unlawfully, wilfully and feloniously have in their possession certain narcotic drugs, to wit, smoking opium, cocaine, and morphine, said defendants then and there being persons required to register and pay a tax under the provisions of the Act aforesaid as amended, and said defendants not then and there having registered under the provisions of the said Act, and not then and there having [4] paid the special tax provided for by the aforesaid Act on the said smoking opium, cocaine and morphine.

That said conspiracy, combination, confederation and agreement between the said defendants and the said divers other persons whose names are as aforesaid, to the grand jurors aforesaid, unknown, was continuously, throughout all of the



time from and after the said 1st day of May, 1922, and at all of the times in this indictment mentioned and referred to, and particularly at the time of the commission of the overt act in this indictment hereinafter set forth, in existence and process of execution.

And the grand jurors aforesaid, on their oaths aforesaid, do further state, that in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said defendants and each of them, did, on or about May 1, 1922, at San Francisco, in the Southern Division of the Northern District of California, then and there being, unlawfully, wilfully, and feloniously have in their possession a certain derivative of coca leaves, to wit, 8 ounces of cocaine, and a certain preparation and derivative of opium, to wit, ten 5-tael cans of smoking opium and five boxes of morphine, one ounce each, said defendants then and there being persons required to register and pay a tax under the provisions of the Act aforesaid as amended, and said defendants not then and there having registered under the provisions of the said Act, and not then and there having paid the special tax provided for by the aforesaid Act on the said cocaine, smoking opium and morphine.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the

statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,  
United States Attorney.  
By GROVE J. FINK,  
Assistant U. S. Attorney.

[Endorsed]: A true bill.

C. A. GRAHAM,  
Foreman.

Presented in open court and ordered filed Sep. 29, 1922. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [5]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 6th day of July, in the year of our Lord one thousand nine hundred and twenty-two. Present: the Honorable MAURICE T. DOOLING, District Judge.

No. 11,132.

UNITED STATES OF AMERICA.

vs.

GEE SUE TOM, etc., et al.

**Minutes of Court—July 6, 1922—Arraignment and  
Plea—(Gee Sue Tom).**

In this case the defendant Gee Sue Tom was



present in court with his attorney, O. P. Stidger, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendant was duly arraigned upon indictment filed herein, stated true name to be as contained therein, waived formal reading thereof and thereupon pleaded "Not Guilty" of offense charged, which plea the Court ordered and the same is hereby entered and case continued to Jul. 15, 1922, to be set for trial.

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 24th day of May, in the year of our Lord, one thousand nine hundred and twenty-two. Present: the Honorable MAURICE T. DOOLING, District Judge.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HON WON CHONG, etc., et al.

**Minutes of Court—May 24, 1922—Arraignment and Plea—(Hon Wong Chong).**

This case came on regularly this day for arraignment of defendant Hon Won Chong who was present in court with his attorney, O. P. Stidger, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for

and on behalf of the United States. Said defendant was duly arraigned upon the indictment filed herein, stated his true name to be as contained therein, waived formal reading thereof and thereupon plead "Not Guilty" of offense charged, which plea the Court ordered and the same is hereby entered, and case continued to May 27, 1922, to be set for trial. On motion of Mr. Stidger, further ordered that the amount of bond for appearance of said defendant herein be and the same is hereby reduced to sum of Fifteen Hundred (\$1500.00) Dollars. [6]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 11th day of October, in the year of our Lord one thousand nine hundred and twenty-two. Present: the Honorable WILLIAM H. HUNT, Judge, United States Circuit Court of Appeals for the Ninth Circuit, sitting in the District Court.

No. 11,785.

UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM.

**Minutes of Court—October 11, 1922—Arraignment and Pleas.**

In this case the defendants were present in court with their respective attorneys. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Each defendant was duly arraigned upon the indictment filed herein, stated true names to be as contained therein, waived formal reading thereof and thereupon each plead "Not Guilty" of offense charged, which pleas the Court ordered and the same are hereby entered. After hearing attorneys, further ordered case continued to Oct. 28, 1922, to be set for trial and that defendants go at large upon their own recognizance. [7]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 22d day of March, in the year of our Lord, one thousand nine hundred and twenty-three. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM.

**Minutes of Court—March 22, 1923—Trial.**

This case came on regularly for trial of defendants, Hon Won Chong and Gee Sue Tom, upon the indictment filed herein against them. Said defendant Hon Won Chong was present with Attorney Roy L. Daily, Esq., and defendant Gee Sue Tom appeared with Attorneys C. A. A. McGee and I. H. Sapiro, Esqs. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Upon calling of case, all parties answering ready for trial, the Court ordered that the same proceed and that the jury-box be filled from the regular panel of trial jurors of this Court. Accordingly, the hereinafter named persons, having been called by lot, sworn, examined and accepted, were duly sworn to try the issues herein, viz.:

Frank Craig,	Chas. M. Boynton,
Walter E. McGuire,	C. D. Carman,
George Dias,	Wm. E. Haley,
Basil N. Rittenhouse,	Berrien P. Anderson,
Manuel V. Silva,	Arthur C. Folsom,
L. F. Weber,	Robert Howden.

Mr. Fink made statement as to the nature of the case and called J. M. Kirkley as a witness on behalf of the United States, who was duly sworn and examined.

Thereupon the attorneys for defendants moved the Court to dismiss indictment or to instruct Jury to return verdict of not guilty as to each defendant, and after hearing attorneys, the Court ordered said motions denied and to which order exceptions were entered. [8]

Mr. Fink then called H. Haley, who was duly sworn and examined as a witness on behalf of the United States, and offered in evidence a certain envelope which was filed and marked U. S. Exhibit No. 1, also offered for identification a suitcase which was marked U. S. Exhibit No. 2 for identification. Mr. Fink also introduced in evidence on behalf of the United States certain exhibits, which were filed and marked U. S. Exhibits Nos. 3 (tag), 4 (registered letter), 5 (ticket), 6 (valuation slip) and 7 (blank paper with punch-mark).

Thereupon the Court, after admonishing the jury herein, ordered that the further trial of defendants upon said indictment be and the same is hereby continued to Mar. 23, 1923, at 11 A. M. Further ordered, on motion of Mr. Fink, that all witnesses subpoenaed in this case appear on said Mar. 23, 1923, at 11 A. M. [9]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 23d day of March, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,132.

UNITED STATES OF AMERICA.

vs.

HON WON CHONG et al.



**Minutes of Court—March 23, 1923—Trial (Continued).**

This case came on regularly this day for the further trial of defendants upon indictment filed herein against them. Defendant Hon Won Chong was present with Attorney Roy L. Daily, Esq., and defendant Gee Sue Tom appeared with Attorneys C. A. A. McGee and I. H. Sapiro, Esqs., G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. The jury heretofore impaneled and sworn to try defendants herein was present and complete.

Mr. Fink, on behalf of the United States, recalled H. Haley, who was further examined, and then called John Ohman, G. W. O'Neill, F. D. Stribling, H. S. Keyes, A. W. Roberts and J. H. Nichols, each of whom was duly sworn as a witness for the United States and examined, and introduced on behalf of the United States certain exhibits heretofore filed for identification, which were marked U. S. Exhibits Nos. 4, 5, 2, 6 and 3, and introduced in evidence another exhibit which was filed and marked U. S. Exhibit No. 8 (card), and thereupon rested case of United States.

Attorneys for defendants thereupon, on behalf of defendants, moved the Court for order instructing jury to return verdict of not guilty. After hearing attorneys, the Court ordered said motion denied and to which order an exception was entered.

Attorneys for defendants thereupon moved the Court for order quashing indictment herein. [10]

After hearing attorneys and after admonishing the jury herein, the Court ordered that the further trial of defendants upon indictment herein be and the same is hereby continued to Mar. 27, 1923, at 11 A. M., and that all parties be and appear on said day accordingly. [11]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 27th day of March, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HON WON CHONG, etc., et al.

**Minutes of Court—March 27, 1923—Trial (Continued).**

This case came on regularly for further trial of defendants, Hon Won Chong and Gee Sue Tom upon indictment filed herein against them. Said defendants were present with their respective attorneys, viz.: defendant Hon Won Chong with Attorney Roy L. Daily, Esq., and Defendant Gee Sue Tom with Attorneys C. A. A. McGee and I. H. Sapiro, Esqs. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States.

The jury heretofore impaneled and sworn to try defendants was present and complete.

Mr. Fink moved the Court order denying motion of defendants to quash indictment, and thereupon moved the Court for an order consolidating case of United States of America, vs. Hon Won Chong and Gee Sue Tom, No. 11,785, herewith for trial. After hearing objection of attorneys on behalf of defendants and arguments of counsel, the Court ordered that the motion to dismiss or quash indictment be and the same is hereby denied, and that the motion to consolidate be and the same is hereby granted *nunc pro tunc* as of commencement of trial of this case and that the trial of this and consolidated case proceed. Attorneys on behalf of each defendant thereupon entered exception to said order and moved the Court for order quashing and abating indictments as consolidated and for order instructing jury to return [12] verdict of not guilty as to each defendant as to indictments as consolidated, which motions the Court ordered denied. Attorneys for defendants thereupon, on behalf of each defendant, entered plea in bar under indictment No. 11,132, which pleas the Court ordered overruled.

Thereupon the Court ordered that trial proceed. Mr. Fink recalled J. H. McNichols as a witness on behalf of the United States, who was further examined, and introduced in evidence on behalf of the United States an exhibit which was filed and marked U. S. Exhibit No. 9 (book) and also introduced, as to consolidated case, certain evidence heretofore presented and thereupon rested case of United States.



H. Embert Lee was called and duly sworn as interpreter.

Attorneys for defendants called Hon Won Chong (defendant) and Gee Sue Tom (defendant), each of whom was duly sworn and examined as a witness on behalf of defendants, and introduced in evidence on behalf of defendants certain exhibits which were filed and marked Defendants' Exhibits "A," "B" and "C" (Certificates). Case was thereupon rested as to defendants. [13]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 28th day of March, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM.

**Minutes of Court—March 28, 1923—Trial (Continued).**

The trial of this case and consolidated case of United States of America vs. Hon Won Chong and Gee Sue Tom, No. 11,785, was resumed. The jury heretofore impaneled was present and complete.

G. J. Fink, Esq., and Miss Alma M. Meyers, Asst. U. S. Attys., were present for and on behalf of the United States. Defendant Hon Won Chong was present with Attorney Roy L. Daily, Esq., and defendant Gee Sue Tom appeared with Attorneys I. H. Sapiro and C. A. A. McGee, Esqs.

Mr. Fink, on behalf of the United States, recalled H. S. Keyes, who was further examined, and then P. A. Robbins, in rebuttal, who was duly sworn and examined, and then recalled A. W. Roberts, H. Haley and J. M. Kirkley, who were further examined, and rested case of United States.

Mr. Daily recalled defendant, Hon Won Chong, who was further examined.

Thereupon counsel on behalf of each defendant renewed motions to quash indictments and for order instruction jury to return verdict of not guilty as to each defendant as to indictments as consolidated, which motions the Court ordered and the same are hereby denied, and to which order exceptions were entered. [14]

Case was then argued by Miss Meyers, Mr. McGee, Mr. Sapiro and Mr. Fink and submitted, whereupon the Court proceeded to instruct the jury herein, who, after geing so instructed, retired at 5:50 P. M., to deliberate upon a verdict, and returned at 6:25 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present, and in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict, which the Court ordered filed and recorded, viz.:

“No. 11,132—11,785.

We, the Jury, find as to the defendants at the Bar, as follows: Guilty as charged. Hon Won Chong—Gee Sue Tom.

FRANK CRAIG,  
Foreman.”

Thereupon, at the request of counsel for defendants, the Court ordered jury polled and accordingly the jury was duly polled and each juror answered that the verdict as recorded was his verdict.

Thereupon the Court ordered that the jurors be and they are hereby discharged from further consideration of this case and from attendance upon the Court until March 29, 1923, at 11 A. M.

After hearing attorneys, the Court ordered case continued to April 7, 1923, for pronouncing of judgments. On motion of Mr. Fink and over objections of counsel for defendants, further ordered that defendants, in default of a total bond for appearance in sum of Five Thousand (\$5,000.00) Dollars as to each defendant, stand committed to custody of U. S. Marshal and that *mittimus* issue.  
[15]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

Nos. 11,132—11,785.

THE UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM.

**(Verdict.)**

We, the Jury, find as to the defendants at the bar as follows: Guilty as Charged. Hon Won Chong—Gee Sue Tom.

FRANK CRAIG,  
Foreman.

[Endorsed]: Filed Mch. 28, 1923, at 6 o'clock and 25 minutes P. M. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [16]

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HONG WON CHONG and GEE SUE TOM,  
Defendants.

**Motion in Arrest of Judgment.**

Come now Hong Won Chong and Gee Sue Tom, the defendants in the above-styled and numbered cause, and against whom a verdict of guilty was rendered in said cause on the 27th day of March, 1923, and each of said defendants for himself moves the court to arrest the judgment against him and each of them and hold for naught the verdict of guilty rendered against him for the following reasons:

## 1.

Because the bill of indictment in this cause is insufficient to support any judgment against him, in this: the indictment contains but one count, and by such indictment it is sought to charge him and the other defendant with an unlawful conspiracy to violate a law of the United States. Such indictment is insufficient to charge a conspiracy to violate a law of the United States, in that the purpose or object of the conspiracy is not set out with sufficient or proper clearness or certainty. The indictment charges that the said defendants did knowingly, unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, with, between and among themselves, and with divers other persons to the grand jurors aforesaid, unknown, to unlawfully, wilfully and feloniously have in their possession certain narcotic drugs, etc., and does not further describe, declare or set out the object or purpose of the conspiracy. The ownership of such goods is not alleged; no facts are alleged from which it can be determined by an inspection of the indictment [17] how or in which manner the alleged possession was unlawful, and all the allegations are mere conclusions of law and are consistent with lawful and rightful possession.

## 2.

Because no facts are alleged in the said indictment from which it can be determined by an inspection of the indictment that the overt acts charged to have been committed by the defendants Hon Won Chong and Gee Sue Tom, or either of them, were



committed in pursuance of or to effect the object of the alleged conspiracy. In other words, no facts are alleged in the said indictment from which it is made to appear from an inspection of the said indictment from which it can be determined that the purpose or object of the alleged conspiracy was to possess certain narcotics unlawfully and feloniously; that the said indictment is vague, uncertain, indefinite and insufficient, in that the same does not sufficiently aver or state the elements of the alleged crime or offense charged therein, nor the ingredients of which said alleged crime or offense is composed; that no unlawful means, or any means, are set out in said indictment used by said defendants, or either of them in carrying out the alleged conspiracy or combination.

## 3.

That neither said indictment nor any part thereof, alleges any fact or facts showing that the defendants or either of them was a party to any unlawful contract, conspiracy, or combination to violate the Act of Congress of December 17th, 1914, as amended February 24th, 1919, or any other law of the United States. That the allegations charging said defendants and each of *the* them, in said indictment, and in each and every part thereof with a conspiracy, are conclusions of law.

## 4.

Because it does not appear from the allegations of the said indictment with sufficient clearness of certainty, or from [18] the allegations of facts in said indictment that the object or purpose of the

alleged conspiracy was to commit an offense against the law of the United States, and that some overt act was committed by one of the alleged conspirators in furtherance of or for the purpose of carrying out the alleged conspiracy.

## 5.

Because on the trial of this cause the evidence was insufficient to show jurisdiction in this court to hear and determine this cause. That it affirmatively appears from the record and minutes of the court, that an objection was interposed by the defendants and each of them, to the introduction of any testimony after the first witness was sworn, on the ground that the indictment did not state facts sufficient to charge a public offense, and motion was made to quash the indictment; that after the Government rested, both of said motions were renewed, and motion was made that the Court direct the jury to return a verdict of not guilty; that the Court on motion of the District Attorney, consolidated or substituted an indictment numbered 11785, with or for the indictment under which these defendants were being tried; that both of said indictments are now pending and neither has been dismissed; that said action of the Court was unwarranted in law and in violation of the constitutional guaranties of the defendants and each of them; that the defendants have never been apprised, nor are they now, nor can they ascertain under which indictment the jury have found a verdict of guilty; that if this Honorable Court ever did have jurisdiction of this cause, the same was lost when the motion to quash

and direct the jury to return a verdict of not guilty was interposed by the defendants.

6.

That neither the first indictment No. 11132, or *the* the second indictment No. 11785, nor the consolidated indictment, do not show the commission of any offense by the defendants or either of them, against any law of the United States, for the [19] reasons heretofore set forth in paragraphs 1, 2, 3, and 4 of this motion.

7.

The verdict of the jury is not supported by the evidence in the case.

8.

The evidence in the case does not prove, or tend to prove that the said Hon Won Chong and the said Gee Sue Tom, or any or either of them, was a member of the said conspiracy charged in the indictment.

9.

The evidence does not prove, or tend to prove, that there ever was a conspiracy or agreement as alleged in the indictment.

10.

The evidence in the case does not prove, or tend to prove that the said Hon Won Chong and Gee Sue Tom, or any or either of them, was guilty of the offense charged in the indictment.

11.

The verdict in said case, if supported by any evidence at all, is not sustained by sufficient evidence, and is contrary to the manifest weight of the evidence.



The defendants and each of them therefore pray that this motion be sustained, and that the judgment of conviction against him and each of them be arrested and held for naught and that he have all such other orders as may be just or proper in the premises, and he will ever pray.

Dated April 7, 1923.

ROY L. DAILY,  
Attorney for the Defendant Hon Won Chong, etc.  
McGEE & SAPIRO,  
Attorneys for the Defendant Gee Sue Tom, etc.

[Endorsed]: Filed Apr. 7, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[20]

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At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 7th day of April, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,132—No. 11,785.

UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM.

**Minutes of Court—April 7, 1923—Judgment.**

This cause, as heretofore consolidated with case of United States of America, vs. Hon Won Chong and Gee Sue Tom, No. 11,785, came on regularly this day for pronouncing of judgments. The defendants, Hon Won Chong and Gee Sue Tom, were present with their attorney J. H. Sapiro, Esq., and in custody of the U. S. Marshal. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendants were called for judgment, duly informed by the Court of the nature of indictments filed herein against them, or their arraignments, pleas and verdict of the jury. Defendants were then asked if they had any legal cause to show why judgment should not be entered and thereupon Mr. Sapiro presented motion in arrest of judgment, and after hearing attorneys, the Court ordered said motion denied and to which order exception was entered. Thereupon, no sufficient cause appearing why judgment should not be pronounced, the Court ordered that said defendants Hon Won Chong and Gee Sue Tom, for offense of which they stand convicted each be imprisoned for period of two (2) years in the United States Penitentiary at McNeil Island, State of Washington. Further ordered that said defendants stand committed to custody of U. S. Marshal for this district to execute said judgments, and that commitments issue. [21]

Further ordered that execution of judgments be stayed for a period of thirty (30) days, and that

defendants, in default of bond in sum of \$5,000.00 each, pending determination of appeal, stand committed. [22]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

Nos. 11,132—11,785.

THE UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM, *alias*  
GEE TOY.

**Judgment on Verdict of Guilty.**

Grove J. Fink, Esq., Assistant United States Attorney, and the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the indictments filed on the 16th day of May, 1922, and Sept. 29, 1922, charging them with the crime of conspiracy—Viol. Harrison Narcotic Act—Act Dec. 17, 1914, as amended; of their arraignment and plea of not guilty; of their trial and the verdict of the jury on the 28th day of March, 1923, to wit:

“Nos. 11132—11785.

We, the Jury, find as to the defendants at the bar as follows: Guilty as charged.

FRANK CRAIG,  
Foreman.”

The defendants were then asked if they had any

legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion in arrest of judgment; thereupon the Court rendered its judgment:

THAT, WHEREAS, the said Hon Won Chong and Gee Sue Tom having been duly convicted in this court of the crime of conspiracy—Viol. Harrison Narcotic Act—Act Dec. 17, 1914 as am.;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Hon Won Chong and Gee Sue Tom each be imprisoned for the period of two (2) years in the United States Penitentiary at McNeil Island, State of Washington. [23]

Judgment entered this 7th day of April, A. D. 1923.

WALTER B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

[Endorsed]: Entered in Vol. 14 Judg. and Decrees, at page 322. [24]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

Nos. 11,132—11,785.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, *alias* F. T. HENRY, and  
GEE SUE TOM, *alias* GEE TOY,

Defendants.

**Petition for Writ of Error.**

Now come your petitioners, Gee Sue Tom and Hon Won Chong, the defendants herein and bring this petition for a writ of error to the District Court of the United States in and for the Northern District of California, First Division, and in that behalf your petitioners respectfully show:

That, on the 7th day of April, 1923, there was made, given, and rendered in the above-entitled court, a judgment and sentence against the defendants, your petitioners, wherein and whereby your petitioners, said defendants were adjudged and sentenced to imprisonment, to wit, the said Gee Sue Tom and the said Hon Won Chong each to be imprisoned for the term of twenty-four months in the Federal Prison at McNeil's Island; and said defendants your petitioners show that they are advised by counsel, and they aver, that there was and is manifest errors in the record and proceedings



had prior thereto in said cause and in the making, giving, and rendition and entry of said judgments and sentences, to the great injury and damage of your petitioners, all of which errors will be more fully made to appear by an examination of the bill of exceptions to be tendered and filed and in the assignment of errors hereinafter set out and to be presented herewith; and to that end thereafter, that the said judgment, sentence, and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your [25] petitioners now pray that a writ of error may be issued directed therefrom to the District Court of the United States for the Northern District of California, returnable according to law and the practice of this court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had in said cause, and that the same may be removed to the United States Circuit Court of Appeals for the Ninth Circuit, to the end that error, if any has happened, may be duly corrected and full and speedy justice done your petitioners.

And your petitioners make the assignment of errors presented herewith, upon which they will rely and which will be made to appear by a return of the said record, in obedience to the said writ.

Wherefore, your petitioners pray the issuance of a writ as herein prayed, and pray that the assignment of errors, as entered herewith may be considered as their assignment of errors upon the writ, and that the judgment rendered in this cause may

be reversed and held for naught, and that said cause be remanded for further proceedings, and that they may be awarded a supersedeas upon said judgment and all necessary and proper process, including bail.

Dated April 28, 1923.

GEE SUE TOM.

HON WON CHONG.

C. A. A. McGEE and

J. H. SAPIRO,

Attorneys for Defendant Gee Sue Tom.

R. L. DAILY,

Attorney for Defendant Hon Won Chong.

Due and legal service of the above and foregoing petition for writ of error and receipt of a copy thereof is hereby accepted and admitted in the city and county of San Francisco, State of California, this 28th day of April, 1923.

\_\_\_\_\_,  
United States Attorney.

By \_\_\_\_\_. [26]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

Nos. 11,132 and 11,785.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, *alias* F. T. HENRY, and  
GEE SUE TOM, *alias* GEE TOY,

Defendants.

**Assignment of Errors of Defendants Gee Sue Tom  
and Hon Won Chong.**

Gee Sue Tom and Hon Won Chong, the defendants in the above-entitled cause, and plaintiff in error herein, having petitioned for an order from said Court permitting them to procure a writ of error to this court, directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence entered in said cause against the said Gee Sue Tom and Hong Wong Chong now make and file with their said petition the following assignment of errors herein, upon which they will apply for a reversal of said judgment and sentence upon the said writ, and which said error, and each and every of them, are to the great detriment, injury, and prejudice of the said defendants and in violation of the rights conferred upon them by law; and they say that in the record and proceedings in the above-entitled cause,



upon the hearing and determination thereof in the District Court of the United States for the Northern District of California there is manifest error, in this, to wit:

## I.

The Court erred in admitting the introduction of any testimony under the indictment on the ground that the same does not state facts sufficient to charge a public offense, and the [27] Court erred in overruling and denying the defendant's motion to quash the indictment because the indictment does not charge any offense under the laws of the United States.

“Questions by Mr. FINK.—Mr. Kirley, what is your occupation?

“Mr. SAPIRO.—Just a moment. Comes now the defendant, Gee Sue Tom and objects to the introduction of any testimony under the indictment on the ground that the same does not state facts sufficient to charge a public offense. And further moves the Court to quash the indictment at this time because the indictment does not charge any offense under the laws of the United States and because the said indictment does not set forth how or in what manner the alleged possession of narcotics was unlawful, and furthermore that the indictment does not state facts showing that the alleged possession was accompanied by such a purpose or intent or under such circumstances as to render it a violation of any law. The facts averred are consistent with the alleged possession of narcotics being a legally permitted one. . . .

The COURT.—Motion denied, objection overruled.”

“Exception saved.”

## II.

The Court erred in admitting the following testimony over the objection of counsel for defendant upon the ground that it was incompetent, irrelevant and immaterial.

“Q. And can you now fix the date of delivery of a special delivery letter to this defendant prior—the last one prior to May 3d, 1922?

“Mr. McGEE.—Objected to as incompetent, irrelevant, and immaterial.

“A. No, I cannot.

“COURT.—What is the point, Mr. McGee?

“Mr. McGEE.—Why, it has no bearing upon the matter charged in the indictment, conspiracy. Suppose he has received a dozen special [28] delivery letters, what bearing would it have upon this unless the letter itself was introduced in evidence and connects this defendant with the alleged coconspirator?

“COURT.—That would be a matter of weight of the evidence. Evidence of similar transactions in a conspiracy trial is always admissible. Objection overruled; exception saved.

“Q. What was your answer? A. I would say about—either the last of April or the first of May, I am not sure which.”

## III.

The Court erred in overruling and denying motion of defendant to strike out the testimony above

quoted upon the grounds in said motion taken and assigned, to wit:

“Mr. McGEE.—Now, your Honor, at this time we move that the testimony of this witness given in chief and on his cross-examination with reference to other special delivery letters be stricken from the record and all testimony relative to it be stricken from the record and the jury instructed to disregard it for the reason that it develops that there is a record at Reno, in the post-office, showing the time, place and whom the letters were addressed and is the best evidence and is the only evidence that will enable us to adequately protect the interest of the defendant. And for the further reason that it now appears that some of these letters which he now testifies were addressed to other persons or concerns and there is no evidence that it was in the same handwriting as the address on Government’s Exhibit 1, alleged to have been delivered on May 3d.

“COURT.—As to the first part, the best evidence rule applies only when it is sought to show the contents of writing. The testimony of the witness was as to the physical fact. And the second point, it is for the jury to draw any proper inference they may see fit from the delivery of letters to the same place.

“Motion overruled; exception saved.” [29]

#### IV.

That the Court erred in overruling and denying defendants’ motion that the Court direct the jury to find them, the said Gee Sue Tom and the said

Hong Won Chong, not guilty upon the grounds in said motion taken and assigned, to wit:

“1. That the evidence adduced fails to prove a conspiracy as charged in the indictment, for which the defendant could be liable in law to be put upon trial, convicted and punished;

“2. That the evidence fails to prove that the defendant, Gee Sue Tom, was at any time connected with the, or any conspiracy, if any, as charged in the indictment;

“3. That the evidence does not tend to prove that the defendant, Gee Sue Tom, was guilty in the manner and form as charged in the indictment, or at all;

“4. That the indictment charges a conspiracy by the defendant to unlawfully possess certain narcotic drugs, to wit: 8 ounces of cocaine, ten five-  
tael cans of smoking opium, five one-ounce boxes of morphine. The evidence introduced does not show that the said Gee Sue Tom unlawfully possessed any narcotic drugs as alleged in the indictment, nor that the said Gee Sue Tom was carrying on any business requiring him to register and pay a tax under the Act of Congress of December 19, 1914, as amended February 24, 1919, as set out in the indictment;

“5. That the evidence does not show the inception and continuance of said conspiracy or that the defendant was a party thereto, or that he knew of said alleged conspiracy, or that he participated therein, or that he committed any overt act as charged in the indictment, or otherwise.

“6. That the evidence does not show that the alleged conspiracy originated with the defendant or that he joined the conspiracy at its inception, but it shows that a suitcase was [30] checked from Oakland, California, to Reno, Nevada, but does not show that it was the result of a confederation or conspiracy between the defendants and there is not sufficient corroboration of the facts introduced by the Government to authorize the conviction of Gee Sue Tom.

“COURT.—Motion is denied: Exception saved.”

V.

The Court erred in overruling and denying the defendants' motion to quash the indictment and direct the jury to return a verdict of not guilty made at the conclusion of the Government's case upon the grounds in said motion taken and assigned, to wit:

1. That said indictment does not charge any offense under the laws of the United States, because the said indictment does not set forth how or in what manner the alleged possession of said narcotics was unlawful, and that no facts are stated showing that the alleged possession was accompanied by such a purpose or intent or under such circumstances as to render it a violation of any law, and the indictment in case No. 11,132 fails to make any allegation whatsoever with reference to the fact that neither of them registered and neither of them paid a tax.

Mr. SAPIRO.—Now I want to call the attention of the Court to one of the records of this Court



and this indictment in Case 11,785 in which the Government has reindicted these men on the identical charge after this indictment was brought, and in that indictment, if the Court please, the specific allegations denying that these two men were merchants or were dealers and had failed to register and pay the tax is set out.

COURT.—That was filed subsequent to this?

Mr. SAPIRO.—Filed subsequent to this indictment.

Mr. FINK.—We are on trial on the last indictment which was returned by the grand jury in this district. [31]

Mr. SAPIRO.—I beg your pardon. There is the indictment we are on trial on; the Court has it in his hand.

Mr. FINK.—That is not the intent. If you will refer to my opening statement you will note that I carefully quoted the language of the last indictment in this case.

Mr. SAPIRO.—And if you will refer to my opening motion you will see that I called the Court's attention to the number of the indictment and the one we are proceeding on. That was the purpose of my motion.

Mr. McGEE.—You may remember we asked the clerk which we were proceeding under and he handed me that indictment which is in your Honor's hands now.

COURT.—Doesn't the record show?

CLERK.—Yes, your Honor, the record shows. I will get the record.



Mr. FINK.—There are two indictments in this case, may it please the Court.

COURT.—I haven't any doubt about either of them, as far as that goes, but would like to see which one you are proceeding under. I will say, Mr. McGee, that since your motion of yesterday, I compared this first indictment with the decisions and am perfectly satisfied with it.

Mr. FINK.— . . . Investigation discloses the fact that the record shows we are now on trial on indictment #11,132. There are two indictments in the case; the other indictment is 11785. I first desire to direct the attention of the Court to the fact that indictment #11,132 was filed in this Court on May 16, 1922, and that indictment #11,785 was filed upon September 29, 1922. Upon indictment #11,132 all of the preliminaries were completed upon July 6, 1922, and the case was in condition to be set. Upon indictment 11,785 all of the preliminaries were completed upon October [32] 11, 1922, and the case was in condition to be tried. . . . Now, here we have a situation where one indictment #11,132 was returned and another indictment #11,785 was returned to correct what we believed to be an error in the first one, so that we have the identical defendants; we have the identical set of dates; we have the identical charge; and I take it that the only question left, then, is as to whether this court at this time has the right to consolidate. . . .

COURT.—Let me ask you, Mr. Fink, in the first

indictment was there any demurrer interposed to that?

Mr. FINK.—No preliminary motions of any kind, either demurrers, motions to quash, plea in abatement, or any other kind has been interposed to either indictment. So the record shows just the indictments, absolutely nothing else.

COURT.—As I said the other day, gentlemen, I have no doubt whatsoever that the first indictment states facts sufficient to form a conspiracy. It alleges a conspiracy to violate the act of 1914 as amended in 1919 entirely sufficient to call the attention of the defendants to the nature of the charge. Then the district attorney has followed that up with an indictment by the grand jury charging exactly the same offenses in which there is asserted the omission that charges these persons were persons who were required to register and had not done so. The motion to dismiss the first indictment will be denied.

Exception saved.

## VI.

The Court erred in granting the motion of the district attorney that indictments No. 11,132 and 11,785 be consolidated and that the trial be proceeded with over the objection of the defendants.

Mr. FINK.—I therefore renew my motion that these two [33] indictments be consolidated and that we proceed.

Mr. SAPIRO.—To which motion of the district attorney, the defendants object.

The COURT.—The motion to consolidate the two indictments for trial and to proceed will be granted *nunc pro tunc* as at the beginning of this trial. It is true that the exact question has not been presented, but it does not seem to me that this Court is so impotent, where the defect is a mere matter of error of designation of a number, because that is all it amounts to, that it is required to dismiss the charge and go forward under a new indictment. The motion of the district attorney will be granted and we will proceed.

Exception saved by defendant.

## VII.

The Court erred in denying the defendants' motion to direct a verdict of not guilty and quash and abate and overruling defendants' plea in bar upon the ground that jeopardy has attached upon the grounds in said motion taken and assigned, to wit:

Mr. McGEE.—The record now discloses that the motion of the defendants, and each of them, to quash indictment 11,132 and abate the action and to direct the verdict has been overruled as to each of the defendants; that the motion of the district attorney to consolidate indictments 11,132 and 11,785 has been granted by the Court and the Court has entered a *nunc pro tunc* order as of the commencement of the trial with reference to the consolidation. At this time and at this juncture comes the defendant, Gee Sue Tom, and renews the identical motion made with reference to 11,132 *in haec verba*, and upon all the grounds stated,

as to the motion to quash, and to abate and to direct a verdict and further and in addition thereto, enter at this time a plea in bar upon the ground that jeopardy has attached under indictment 11,132, and may we have [34] a ruling upon that?

The COURT.—The motion will be denied and the plea of once in jeopardy will be overruled.

Exception saved.

### VIII.

The Court erred in receiving the testimony offered by the district attorney under indictment 11,785 over objection of defendants and erred in denying defendants' motion that the same be stricken from the record and that the jury be instructed to disregard it, upon the grounds in said motion taken and assigned, to wit:

Mr. FINK.—May it please the Court, I now make a formal offer of the testimony of Messrs. Kirly, Haley, Ohman, O'Neill, Keyes, Roberts, and McNichols, on both direct and cross-examination as heretofore given, commencing upon March 22d and continuing through March 23d; the testimony of Mr. Stribling, also, that was stipulated, however. That testimony is offered as applying to indictment 11,785 as well as to 11,132. (Defendants had previously stipulated that the testimony if offered would be identical with that heretofore given by the same witnesses, preserving all of their rights, except the constitutional right to be confronted with the witnesses who would testify against them.)

Mr. McGEE.—That goes as to all the motions and rulings of the Court.

Mr. FINK.—Yes, and exhibits also.

Mr. McGEE.—I understand the district attorney includes in that offer all the objections, exceptions, and rulings of the Court.

COURT.—All proceedings whatsoever.

Mr. McGEE.—Now, at this time, comes the defendant Gee Sue Tom and objects to the reception of any testimony on all the grounds [35] heretofore stated incorporated in *haec verba*, and the additional ground that it is incompetent, irrelevant, and immaterial, and that the said defendants have heretofore been placed in jeopardy and also move that all of the testimony applicable to the consolidation of the action 11,785 be stricken from the record and that the jury be instructed to disregard it.

Objection overruled, motion denied; exception saved.

## IX.

The Court erred in overruling and denying defendants' motion for a directed verdict of not guilty at the conclusion of all the testimony upon the grounds in said motion taken and assigned, to wit:

Mr. McGEE.—At this time, briefly, by reference merely, we renew in *haec verba* and upon all the grounds and points the motions made to quash, abate, and at this time ask the Court to direct the jury to return a verdict for defendant Gee Sue Tom.

COURT.—Motion denied; exception saved.



## X.

The Court erred in giving the following instruction over the objection of counsel for defendant, to which exception was duly taken:

“In this case there are two indictments. These indictments, however, charge but a single offense, and upon them you can render but a single verdict of either guilty or not guilty. That is to say, you are for the purposes of your verdict to consider the second indictment as a mere amendment or correction of the first.”

## XI.

The Court erred in giving the following instruction to the jury over the objections of counsel for defendant, to which exception was duly taken:  
[36]

“In this connection I instruct you that if you find that either of the defendants had in his possession a baggage check entitling him or them to the possession of a suitcase containing any of these drugs, then the possession of such check with knowledge of the contents of the suitcase and intent to procure the suitcase is, in law, the possession of the drug. But these defendants are not charged with having the drugs in their possession. They are charged with a conspiracy so to do.”

## XII.

The Court erred in giving the following instruction to the jury over the objections of counsel for defendants, to which exception was duly taken:



“You are instructed in the first place that under the Act of Congress mentioned in this indictment it is a crime to have in possession opium, morphine, or cocaine, unless the person so having in possession has registered and paid the prescribed tax. There is no claim or pretense here that either of these defendants has registered or paid the tax and, therefore, the possession of these drugs by either of them would constitute a crime against the United States. It is not necessary for the Government to show failure to register or pay the tax if it shows possession.”

### XIII.

The Court erred in overruling defendants' motion in arrest of judgment upon the grounds in said motion taken and assigned, to wit:

1. Because the bill of indictment in this cause is insufficient to support any judgment against him, in this: the indictment contains but one count, and by such indictment it is sought to charge him and the other defendant with an unlawful conspiracy to violate a law of the United States, in that the purpose or object of the conspiracy is not set out with sufficient or proper clearness or certainty. The indictment charges that the said defendants [37] did knowingly, unlawfully, wilfully, and feloniously conspire, combine, confederate and agree together, with, between and among ourselves, and with divers other persons to the grand jurors aforesaid unknown, to unlawfully, wilfully and feloniously have in their possession certain narcotic

drugs, etc., and does not further describe, declare or set out the object or purpose of the conspiracy. The ownership of such goods is not alleged; no facts are alleged from which it can be determined by an inspection of the indictment how or in which manner the alleged possession was unlawful, and all the allegations are mere conclusions of law and are consistent with lawful and rightful possession.

2. Because no facts are alleged in the said indictment from which it can be determined by an inspection of the indictment that the overt acts charged to have been committed by the defendants Hon Won Chong and Gee Sue Tom, or either of them, were committed in pursuance of or to effect the object of the alleged conspiracy. In other words, no facts are alleged in the said indictment from which it is made to appear from an inspection of the said indictment from which it can be determined that the purpose or object of the alleged conspiracy was to possess certain narcotics unlawfully and feloniously; that the said indictment is vague, uncertain, indefinite, and insufficient, in that the same does not sufficiently aver or state the elements of the alleged crime or offense charged therein, nor the ingredients of which said alleged crime or offense is composed; that no unlawful means, or any means are set out in said indictment used by said defendants or either of them in carrying out the alleged conspiracy or combination.

3. That neither said indictment nor any part thereof, alleged any fact or facts showing that the defendants or either of them was a party to any

unlawful contract, conspiracy, or combination to violate the Act of Congress of December 17th, 1914, as [38] amendment February 24th, 1919, or any other law of the United States. That the allegations charging said defendants and each of them, in said indictment, and in each and every part thereof, with a conspiracy, are conclusions of law.

4. Because it does not appear from the allegations of the said indictment with sufficient clearness or certainty, or from the allegations of facts in said indictment that the object or purpose of the alleged conspiracy was to commit an offense against the law of the United States, and that some overt act was committed by one of the alleged conspirators in furtherance of or for the purpose of carrying out the alleged conspiracy.

5. Because on the trial of this cause the evidence was insufficient to show jurisdiction in this Court to hear and determine this cause. That it affirmatively appears from the record and minutes of the Court, that an objection was interposed by the defendants, and each of them, to the introduction of any testimony after the first witness was sworn, on the ground that the indictment did not state facts sufficient to charge a public offense, and motion was made to quash the indictment; that after the Government rested, both of said motions were renewed, and motion was made that the Court direct the jury to return a verdict of not guilty; that the Court on motion of the district attorney, consolidated or substituted an indictment numbered 11,785 with or for the indictment under

which these defendants were being tried; that both of said indictments are now pending and neither has been dismissed; that said action of the Court was unwarranted in law and in violation of the constitutional guaranties of the defendants and each of them; that the defendants have never been apprised, nor are they now, nor can they ascertain which indictment the jury have found a verdict of guilty; that if this Honorable Court ever did have jurisdiction of this cause, the same was lost when the motion [39] to quash and direct the jury to return a verdict of not guilty was interposed by the defendants.

6. That neither the first indictment No. 11,132, or the second indictment No. 11,785, nor the consolidated indictment, do not show the commission of any offense by the defendants or either of them, against any law of the United States, for the reasons heretofore set forth in paragraphs 1, 2, 3, and 4 of this motion.

7. The verdict of the jury is not supported by the evidence in the case.

8. The evidence in the case does not prove, or tend to prove that the said Hon Won Chong and the said Gee Sue Tom, or any or either of them, was a member of the said conspiracy charged in the indictment.

9. The evidence does not prove, or tend to prove, that there ever was a conspiracy or agreement as alleged in the indictment.

10. The evidence in the case does not prove, or tend to prove that the said Hon Won Chong and

Gee Sue Tom, or any or either of them, was guilty of the offense charged in the indictment.

11. The verdict in said case, if supported by any evidence at all, is not sustained by sufficient evidence, and is contrary to the manifest weight of the evidence.

#### XIV.

The Court erred in making, giving, and rendering judgment against the defendants for the reason that said indictment does not state any crime or any offense against any law of the United States, and for the reasons taken and assigned by the defendants in their motion in arrest of judgment.

#### XV.

The Court erred in sentencing the defendants without their being first lawfully adjudged guilty of any crime. [40]

#### XVI.

The Court erred in pronouncing sentence of imprisonment against the said defendants.

Exceptions were duly taken to each and every of the above specified rulings.

WHEREAS, by the law of the land, said judgment ought to be given for said Gee Sue Tom and Hon Won Chong, plaintiffs in error, and against the United States of America, defendant in error, said plaintiffs in error, Gee Sue Tom and Hon Won Chong, do now pray that the judgment herein rendered against them to be reversed and annulled and altogether held for nothing and that the sentence herein imposed upon them to be set aside and held for naught and that they be restored to all



things which they have lost by occasion of the said judgment and that they be afforded such and any and all other relief as may be meet in the premises.

Dated at San Francisco, California, April 28, 1923.

R. L. DAILY,

Attorney for Hon Won Chong.

C. A. A. McGEE and

J. H. SAPIRO,

Attorneys for said Defendant Gee Sue Tom.

Due and legal service of the above and foregoing assignment of errors, and receipt of a copy thereof, is hereby accepted and admitted in the city and county of San Francisco, State of California, this 28th day of April, 1923.

\_\_\_\_\_ ,

United States Attorney.

By \_\_\_\_\_.

[Endorsed]: Filed Aug. 9, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[41]



In the Southern Division of the United States District Court, for the Northern District of California, First Division.

11,132.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, etc., and GEE SUE TOM,  
etc.,

Defendants.

**Order Allowing Writ of Error and Supersedeas.**

Come now Hon Won Chong and Tom Gee Sue, defendants herein, and file herein and present to the Court their petition praying for the allowance of a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, to the above-entitled court, and submit herewith the assignment of errors intended to be urged by them; praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above-entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said writ of error in the aforesaid United States Circuit Court of Appeals.

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised, and each of the above-named defendants having heretofore submitted to the above-entitled court his respective bond for appearance in the United States District Court, for the Northern District of California, or in the United States Circuit Court of Appeals for the Ninth Circuit, or in the Supreme Court of the United States of America, as may hereafter in this cause be ordered, in the sums following, to wit: Defendant Hon Won Chong in the sum of Five Thousand Dollars (\$5,000.00), and the [42] defendant Gee Sue Tom in the sum of Five Thousand Dollars (\$5,000) (said sums being the amount of bail heretofore fixed by this Court for each of said defendants respectively, and said bonds, and each of them, having been heretofore accepted and approved by this Court):

IT IS HEREBY ORDERED that the said petition and the aforesaid writ of error be, and the same is hereby allowed; and,

IT IS FURTHER ORDERED that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and,

IT IS FURTHER ORDERED that all further proceedings in this above-entitled District Court be suspended, stayed and superseded until the final disposition of said writ of error in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit; and,

IT IS FURTHER ORDERED that sentence and execution herein be stayed until the final disposition of said writ of error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and,

IT IS FURTHER ORDERED that the bond for costs upon the writ of error herein be, and it is hereby fixed at the sum of Five Hundred (\$500.00) Dollars, said bond to be entered into jointly by the two defendants hereinabove named.

Dated: San Francisco, California, August 9th, 1923.

JOHN S. PARTRIDGE,  
Judge of the United States District Court for the  
Northern District of California, First Division.

Due and legal service of the above and foregoing order allowing writ of error and supersedeas and receipt of a copy thereof, is hereby accepted and admitted in the city and county of San Francisco, State of California, this — day of May, 1923.

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United States Attorney.

[Endorsed]: Filed Aug. 9, 1923. Walter B. Mal-  
ing, Clerk. By C. M. Taylor, Deputy Clerk. [43]

In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

Nos. 11,132 and 11,785.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, *alias* F. T. HENRY, and  
GEE SUE TOM, *alias* GEE TOY,

Defendants.

**Bill of Exceptions on Behalf of Gee Sue Tom and  
Hon Won Chong.**

BE IT REMEMBERED that heretofore the Grand Jury of the United States in and for the Northern District of California, First Division, did find and return in, to and before the above-entitled court its two several indictments against the defendants Hon Won Chong and Gee Sue Tom, numbered 11,132 and 11,785, and thereafter the said Hon Won Chong and Gee Sue Tom appeared in Court, and upon being called to plead to said indictments, entered their pleas of not guilty; and

BE IT FURTHER REMEMBERED, that the said defendants, having duly pleaded not guilty, as shown by the record herein, and the cause being at issue, case No. 11,132 came on for trial before the Honorable John S. Partridge, District Judge of said court, and a jury duly empanelled, the United States being represented by John T.

Williams, Esq., United States Attorney, Grove J. Fink, Esq., Assistant United States Attorney, and Miss Alma M. Myers, Assistant United States Attorney, and the defendant Gee Sue Tom being represented by C. A. A. McGee and J. H. Sapiro, and the defendant, Hon Won Chong by Roy L. Daily, Esq., and the following proceedings were had:

Grove J. Fink, Esq., Assistant United States Attorney, made an opening statement of the case to the jury, [44] as follows: "The case, as you have been advised is the United States vs. Hong Wong Chong and Gee Sue Tom. The indictment is returned under Section 37 of the Criminal Code of the United States. That section defines the crime of conspiracy as separate and distinct from any other crime. The indictment which we have here before us and upon which we are about to go to trial alleges that the defendants, conspired, combined, confederated together to violate certain requirements of an act or law of the United States, namely the act of December 17, 1914, as amended, the Act which is commonly known and called the Harrison Narcotic Act. The indictment alleges specifically that the combination, confederation or agreement was on or about May 1, 1922; that these defendants were implicated and were the parties so conspiring, that the object of the conspiracy was to have in their possession certain narcotic drugs, to wit, smoking opium and morphine, the defendants then and there being persons required to register and pay a tax under



the terms of the Harrison Narcotic Act, and not having registered or paid the tax as required by law.

It is alleged that the conspiracy or combination has been or was in effect from May 1st 1922, at all times up to and including the date of the filing of the indictment, and inasmuch as Section 37 required the stating in the indictment of an overt act, or an act done in furtherance of the conspiracy, it is alleged that in furtherance of the conspiracy on or about May 1st, 1922, at San Francisco, in the Southern District, etc., these defendants did unlawfully, wilfully and feloniously have in their possession a certain derivative of coca leaves, namely eight ounces of cocaine, and a certain preparation and derivative of opium, namely ten five-tael cans of smoking opium and five boxes of morphine of one ounce each, and that the defendants at the time of so having possession of the drugs there named were persons [45] required to register and pay a tax under the terms of the Act, and that neither had registered nor paid the tax.

In support of the indictment we will show you that in Reno in the State of Nevada, on or about May 3d, 1922, one of these defendants was arrested. We will show you that there came to him checked on a regular ticket of the Western Pacific Railroad Company, I believe, a regular passenger ticket, one suitcase; that the suitcase contained drugs as listed in the indictment. That the defendant in San Francisco—and, gentlemen, I must say that I am a little bit confused myself as to which is which,



they being Chinese names; Gee Sue Tom is the man in Reno, and Hong Wong Chong is the man in San Francisco. At any event we will show you that the man in San Francisco was arrested, and that there was found upon his person a Western Pacific passenger ticket, the baggage portion of which had been used, and it was checked showing use of the baggage ticket, and we will show you that the number on which the baggage left San Francisco corresponded with the number of the suitcase found in Reno, Nevada.

We expect, Gentlemen, to show you that the San Francisco end of the conspiracy, namely Gee Sue Tom, answered to the name of F. T. Henry, the name of the persons sending the material to the Reno defendant Hong Wong Chong.

And, Gentlemen, after supporting each and every one of the material allegations of the indictment, we will ask you for a verdict of guilty, as charged.” [46] The plaintiff to maintain the issues, on its part to be maintained, introduced and offered in evidence the following testimony, to wit:

**Testimony of J. M. Kirkley, for the Government.**

J. M. KIRKLEY, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

(Questions by Mr. FINK.)

Q. Mr. Kirkley, what is your occupation?

Mr. SAPIRO.—Just a moment. Comes now the defendant, Gee Sue Tom, and objects to the introduction of any testimony under the indictment on the ground that the same does not state facts suffi-

cient to charge a public offense. And further moves the Court to quash the indictment at this time because the indictment does not charge any offense under the laws of the United States and because the said indictment does not set forth how or in what manner the alleged possession of narcotics was unlawful, and furthermore that the indictment does not state facts showing that the alleged possession was accompanied by such a purpose or intent or under such circumstances as to render it a violation of any law. The facts averred are consistent with the alleged possession of narcotics being a legally permitted one.

Calling your Honor's attention particularly to this indictment, the fact that the Harrison Narcotic Act is an act for revenue purposes only and permits of a legal possession and ownership of narcotics. Now, this indictment returned in 11132 which we are now trying simply alleges on the first page as follows:

"The said defendants did at the time and place aforesaid, knowingly, unlawfully, wilfully and feloniously conspire, combine, confederate and agree together with, between and among themselves and with diverse other persons to the grand jurors aforesaid unknown, to unlawfully, wilfully and feloniously possess certain narcotic drugs, towit: smoking opium, cocaine and morphine, [47] which said narcotic drugs did not then and there bear and have affixed appropriate tax-paid stamps as required by the aforesaid act of Congress."

Now, the provision of the law is that certain people may have these narcotics, but must pay a tax

(Testimony of J. M. Kirkley.)

and the failure to negative that provision of law in the indictment leaves the broad presumption that the possession is legal and it is a fatal defect in this indictment not to have that averment in and in support of that proposition, I cite to your Honor *Hilt vs. U. S.*, 279 Fed. 421, directly in point, holding an indictment was faulty under these circumstances.

COURT.—Motion denied, objection overruled.

Mr. DAILY.—If your Honor please, on behalf of defendant Hon Won Chong, I desire to incorporate the same motion and one additional, that when a statute quotes an exception the exception must be affirmatively pleaded. That not being so in this case, we ask that the motion be granted.

COURT.—Motion denied.

Mr. DAILY.—Exception saved. All the way through may the exceptions for both defendants be considered as one?

COURT.—Yes.

Mr. McGEE.—The stipulation may stand that when the objection is made and exception follows it, it shall be for both defendants?

COURT.—The record shows an exception in this case.

#### Direct Examination.

I live in Reno, Washoe County, Nevada. I have been chief of police there for four years, and have known defendant Gee Sue Tom for five or six years. I first saw special delivery letter on my desk in Reno and made an endorsement thereon.

(Testimony of J. M. Kirkley.)

I opened the letter and returned it to the Postoffice and reported the matter to Narcotic Agent Haley on May 3, 1922. About half an [48] hour later I accompanied Mr. Haley to the home of Gee Sue Tom. Mr. Haley had a search-warrant. I have known Gee Sue Tom by the name of Gee Toy. We went to his house to pick him up. The letter was here introduced in evidence and marked Government Exhibit 1. I did not see letter, Government's Exhibit 1, delivered to Gee Sue Tom or Gee Toy. I took it away from him and opened it and took out a baggage check and key and went over to the Western Pacific Depot and got his suitcase; this occurred at Reno, Nevada. Prior to going over to the Western Pacific Depot I placed Gee Sue Tom, *alias* Gee Toy, under arrest. Did not open suitcase until returned to police station. I got the key to open the suitcase in the letter in a little package therein. I identify Gee Toy as the big fellow and I got a suitcase with that baggage check. I can identify the suitcase by the contents, and those are the contents we took from the suitcase, the baggage check I presented at the Western Pacific Station calls for a suitcase; I got the check out of the letter on the person of Gee Toy.

On cross-examination the witness testified as follows:

By Mr. McGEE.—When I received that letter I was in my office. I was not present when the letter was delivered to Mr. Gee Toy. He had the letter in his hands when I took it. I do not think he had



(Testimony of J. M. Kirkley.)

ever seen the letter prior to the time I opened it. The post boy left the letter in my office. I delivered the letter to the postmaster himself at the postoffice. When next I saw it was in the hands of Gee Toy at his place of business, the store. He lives there also. The name of the store is Chew Kee Company and proprietor is Gee Fox Song, a brother of Gee Toy. The only proprietor I know of that [49] store was Gee Fox Song. He may have had some other name for all I know. We arrived at the store between half past eleven and twelve o'clock on May 3d and there were present besides myself and Gee Sue Tom, Narcotic Agent Haley, Special Indian Agent O'Neill and the special delivery boy. I did not see the delivery of the letter. I came in afterwards. Gee Sue Tom was holding it in his hand. I don't think he ever had opened it or went into it. I don't remember whether the check fell out on the floor or not. It was opened before it came into his hands. There are quite a number of Chinamen staying at this store. Tom Gee Sue lives in a little building probably a step from the store. I never knew Tom Gee Sue to work at engines until this summer. Do not know of him doing carpenter work or waiting on a restaurant. Saw Gee Sue Tom sometimes every day, maybe a week I wouldn't see him. He was around the store most of the time. I cannot remember him working in a laundry. I personally got the suitcase that has been marked for identification on the strength of the check at the depot.



(Testimony of J. M. Kirkley.)

Signed no receipt for it. No objection made to my getting suitcase.

By Mr. DAILY.—Postmark on the envelope shows Stockton and Reno. No San Francisco postmark on it. I am unable to say whether or not Gee Toy ever opened this envelope. This store is general merchandise and Chinese. His brother is the owner, and I do not know whether he was working there.

By Mr. McGEE.—The defendant was known as Gee Toy to the police department. I went down to Gee Sue Tom's place with the Narcotic Agent to get the Chinaman when he got his letter. The boy got there with the letter before I did.

Redirect by Mr. FINK.

I identify Gee Toy as the one standing up. I also knew him at one time under the name of Ah Tom, also Gee Toy, also Gee Sue Tom. [50]

Mr. FINK.—I desire at this time to read into the record the face of the envelope, Government's Exhibit 1 in evidence. In the upper left-hand corner appears "From F. T. Henry, 1040 Stockton St., S. F., Cal."; in the upper right-hand corner one special delivery United States postage stamp and one United States two cent postage stamp. Address "Gee Toy, c/o Chow Kee, 129 First St., Reno, Nev." Postmarked "Stockton, May 2, 9:30 A. M., Calif." Also on the left two rows of Chinese characters, which counsel cannot read and a rubber stamp in the lower left-hand corner "Fee claimed by office of first address." Sealed with a

(Testimony of H. Haley.)

sticker "Post Office Department, United States of America. Officially sealed." On the reverse side, bearing the postmark "Reno, Nev., May 3, 7 A. M., 1922. Rec'd." Also bearing the mark in lead pencil on the address side "Not Box 44. Opened by mistake."

From F. T. Henry	Special	Two
1040 Stockton St.	Delivery	Cent
S. F., Cal.	Stamp	Stamp
(Chinese Characters)	GEE TOY	Stamp
		Stockton
Fee claimed by office	c/o Chow Kee	May 2
of first address.		920 AM
	129 First St.	Calif.
	Reno, Nev.	

Reverse side:

	Stamp
	Reno, Nev.
	May 3
Sealed with official	7 AM
sticker	1922
	Rec'd

[51]

### Testimony of H. Haley, for the Government.

H. HALEY, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FINK.)

I am narcotic inspector for the Internal Revenue

(Testimony of H. Haley.)

Department and have been such since May, 1919. I was assigned as such at Reno, Nevada, on May 2d and 3d, 1922. I know the defendant Gee Sue Tom, *alias* Gee Toy, and also J. M. Kirkley. On May 3d, 1922, I saw Gee Sue Tom at the store that he stays in; I went there with a search-warrant. Postmaster of Reno showed me a letter that had been opened by mistake, Government's Exhibit 1, and he put an official seal on the letter and gave it to special delivery boy for delivery. I secured a search-warrant from the United States Commissioner for the letter and asked Chief Kirkley and Officer O'Neill to go with me. The boy took the letter to go to deliver it and we followed the boy to the place, 129 Front St. The boy went inside with the letter and we were just a few feet from him. He was inside probably one-half a minute, stepped right out and we followed him in. I showed my search-warrant and Mr. Kirkley took the letter Govt. Exhibit #1 from the Chinaman, Gee Sue Tom. I opened the letter and took the baggage check and secured another search-warrant for the suitcase that the check called for and went to the Western Pacific Depot at Reno and got the suitcase. I identify that suitcase and contents Govt. Exhibit #2 for identification, which I procured on check #409250, which I identify as Govt. Exhibit #3. Number of ticket on suitcase was 409250. Gee Sue Tom was arrested at the time letter was taken from him.

I was in San Francisco on May 9th, 1922, and prepared a registered letter addressed to F. T.

(Testimony of H. Haley.)

Henry at 1040 Stockton Street and caused that letter to be delivered there by Agent Keyes of our department. Cancellation stamps and postmarks were put on at the Ferry Postoffice and the letter was sent [52] and went through as a regular letter. I was in the vicinity of 1040 Stockton Street in this city, county and State, on the 9th of May. Went into Apartment No. 38 of the place. The defendant Hon Won Chong had been arrested by Mr. Keyes, and assisted Mr. Halstead and Mr. Keyes in searching the pockets of Hon Won Chong, the defendant, and also in searching the room. They took a bunch of papers from his pocket and I found this ticket in the papers. The defendant had been previously placed under arrest. The narcotics in the suitcase are in the same condition that they were at the time they were found save and except for a sample being taken from them. This is a slip that was signed by the party who checked the baggage in the Oakland Depot May 1, 1922, and bears number 409250 and thereupon at the request of Mr. Fink the above-mentioned registered letter was marked Govt. Ex. 4 for identification and the above-mentioned railroad ticket was marked Govt. Ex. 5 for identification and the above-mentioned Western Pacific Railroad baggage slip was marked Govt. Ex. 6 for identification and the above-mentioned slip of blank paper bearing pencil mark was marked Govt. Ex. 7 for identification and the witness identified the same.



(Testimony of H. Haley.)

Cross-examination.

(By Mr. SAPIRO.)

I first saw letter marked Government's Exhibit No. 1 about 11 o'clock on May 3d at the postoffice in Reno. At that time a sticker was put over the top. Mr. Ohman, special delivery messenger, took the letter to 129 Front Street. We walked about fifty feet behind him but in sight of him all the time. The defendant did not have time to open the letter by the time we got in there and did not open it. Defendant was standing just a few feet inside the front. He had the letter in his hand. I told him I had a search-warrant for him and he didn't say anything at all. Mr. Kirkley took the letter from him; we informed him he was under arrest. Mr. Kirkley went immediately to the [53] depot with the baggage check; the defendant was left with Mr. O'Neill. This yellow slip, Government's Exhibit 6 is the original on file in the Oakland office. They usually mark it in the book also. I have been in Nevada about eighteen months prior to May 3, 1922.

(By Mr. DAILY.)

The part written on this envelope in English is in my handwriting. Chu Kee Company is the name of a store in Reno. Mr. Keyes delivered the letter. I was waiting outside in the street. Apartment 38 was either on the second or third floor. I did not see Hon Won Chong with this letter. Mr. Keyes had already taken it from his possession when I got in. He had already arrested Hon Won Chong. I gave it to Keyes for delivery. [54]



(Testimony of H. Haley.)

I first saw this railroad ticket when it was taken from among some papers in Hon Won Chong's pocket when he was standing in his room at 1040 Stockton Street in the presence of Mr. Keyes, Mr. Halstead, Mr. Roberts, and myself. I searched room 38 and Hon Won Chong and found no narcotics. When I first saw Government's Exhibit 1 it had already been opened. There is no other valuation certificate that I know of other than the twenty-five dollars. I never instructed anyone to change any record of valuation.

(By Mr. SAPIRO.)

I found no narcotics either on the person of Gee Sue Tom on May 3d or at any other time; neither did I find any on the premises, 129 Front Street, Reno. Neither I nor anyone else made any search of the premises.

(By Mr. FINK.)

I found narcotics in the suitcase I got from the Western Pacific Depot. The English writing on Government's Exhibit #4 for identification was written by myself; the Chinese characters were written by a Chinaman and I asked him to address it to Soo Hoo Yee Way in Chinese.

(By Mr. DAILY.)

None of these Chinese characters addressed to F. T. Henry, and the name of Hon Won Chong does not appear on there at my direction.

**Testimony of John Ohman, for the Government.**

JOHN OHMAN, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. FINK.

I have lived in Reno, Nevada, a little over twelve years. Am working for the Postoffice Department delivering special delivery letters. I know the defendant Gee Sue Tom by the other name of Gee Toy. I would say that before May 3d, 1922, I delivered six or seven special delivery letters to him. [55]

Q. And can you now fix the date of delivery of a special delivery letter to this defendant prior—the last one prior to May 3d, 1922?

Mr. McGEE.—Objected to as incompetent, irrelevant and immaterial.

A. No, I cannot.

COURT.—What is the point, Mr. McGee?

Mr. McGEE.—Why, it has no bearing upon the matter charged in the indictment, conspiracy. Suppose he has received a dozen special delivery letters. What bearing would it have upon this unless the letter itself was introduced in evidence and connects this defendant with the alleged coconspirator?

COURT.—That would be a matter of weight of the evidence. Evidence of similar transactions in a conspiracy trial is always admissible. Objection overruled; exception saved.

Q. What was your answer?

(Testimony of John Ohman.)

A. I would say about—either the last of April or the first of May, I am not sure which. In the month of May, 1922, the postoffice regulations did not require any receipts for special delivery letters. I remember Government's Exhibit 1 as a special delivery letter that I delivered to Gee Toy on May 3d. I got the letter from the postoffice and this official seal was placed upon it after I had taken it to the station. I delivered it personally to Gee Toy about ten o'clock May 3d, 1922.

Cross-examination.

(By Mr. McGEE.)

I have been in charge of the special delivery department at Reno since the last of April, 1922. In our department we keep a record of every special delivery letter that comes in. I have not that record with me; it is at Reno. When I first received letter marked Government's Exhibit 1, I took it to the police station under instructions from the postoffice inspector. I left it with a patrolman who was acting desk sergeant about half past eight on the morning of May 3d. It was then unopened. Postmaster put the sticker across the top after [56] it had been opened. This envelope is in identically the same condition that it was in when I took it over to the station with the exception of the sticker and the mark of the clerk here in court. It came into my hands again about half past ten from Mr. Haley. My instructions were to deliver it to Gee Toy. The letter is addressed to 129 East First Street, and I delivered it to 129 East Front

(Testimony of John Ohman.)

Street. I did not deliver it to the place where it was addressed. There is no such street in Reno. I happened to know that was his place of business and that was the name that he was going by. That is Gee Toy standing up. He has been running a store there for quite a while and seemed to be the only one there. The Chu Kee Company is the name of the store. I believe his brother is the owner but I have never seen him. I believe his brother's name is Gee Fook Sang. I don't know for certain that that was his place of business, only that I have seen him there considerably; he has been the only one there when I was there. I have heard that his brother is the owner from the Chief of Police. I went to work in charge of the special delivery department somewhere around the last of April, 1922. I might have worked seven or eight days before May 3d, 1922, and six or seven of these letters could have come to him in that time. I am not sure whether one came every day or every other day. When I delivered the letter I asked him if his name was Gee Toy and he said yes. I told him that the letter had been opened by mistake and that the postmaster had sealed it up and then I handed it to him and walked out. I did not see him open it. The officers came in just as I went out. There was no one in the store besides myself and Gee Toy.

Redirect Examination.

(By Mr. FINK.)

Front Street in Reno is a street that runs east from Virginia Street, and First Street is a street

(Testimony of John Ohman.)

that runs off of Riverside Drive. First Street is mostly residences and Front Street is office buildings and the lower part of it is Chinatown. [57] I couldn't say exactly when I went to work regularly in the postoffice but it was some time after April 15, 1922. Before that I worked on and off as a helper and few things like that. The person to whom I [58] delivered the letter at the chief's office was the person then in charge of the office.

Recross.

(By Mr. McGEE.)

Q. Have you any particular knowledge, Mr. Ohman, of the outside superscription and what appeared upon the envelopes of the other letters that you say were delivered to this defendant?

A. Some of them were addressed to the Chu Kee Company, some of them to Gee Toy at Chu Kee Company—

Q. But this is the only one that was addressed to First Street and to Gee Toy?

A. Not the first one that was addressed to Gee Toy, no.

Q. You know were addressed to Gee Toy? Now, you have said that several of them were addressed to other people?

A. Well, several of them were—some of them were addressed to just Gee Toy and some of them were addressed to Gee Toy at Chu Kee Company.

Q. Can you testify as to the character of the handwriting on these envelopes? Were they all in the same handwriting?



(Testimony of John Ohman.)

A. I don't know. I didn't look at them close enough to know whether they are or not.

Q. You wouldn't say, then, would you? A. No.

Q. Didn't you notice whether there was any return address or not? A. No.

Mr. McGEE.—Now, your Honor, at this time we move that the testimony of this witness given in chief and on his cross-examination with reference to other special delivery letters be stricken from the record and all testimony relative to it be stricken from the record, and the jury instructed to disregard it for the reason that it develops that there is a record at Reno, in the postoffice, showing the time, place, and whom the letters were addressed, and is the best [59] evidence and is the only evidence that will enable us to adequately protect the interests of the defendant, and for the further reason that it now appears that some of these letters which he now testifies were addressed to other persons or concerns and there is no evidence that it was in the same handwriting as the address on Government's Exhibit 1 alleged to have been delivered on May 3d.

COURT.—As to the first part, the best evidence rule applies only when it is sought to show the contents of writing. The testimony of the witness was as to the physical fact. And the second point, it is for the jury to draw any proper inference they may see fit from the delivery of letters to the same place.

**Testimony of G. W. O'Neill, for the Government.**

G. W. O'NEILL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(Questions by Mr. FINK.)

I reside at Reno, Nevada; have lived there for about nine years; am a special officer, U. S. Indian Service for the suppression of liquor and drugs among the Indians. I was in Reno on May 3d, 1922, and saw the defendant Gee Sue Tom, *alias* Gee Toy, on that day at Chu Kee's store. I am confused as to whether it is Front Street or First Street, but it is in the Chinese part of town. At the request of Mr. Haley I accompanied him and Chief of Police Kirkley there. I identify Gee Toy as the same person we call here Gee Sue Tom, who I found at the store. I knew him as Gee Toy before I went there. Mr. Haley and the Chief of Police went into the front and I went to the rear and when I came in the front Mr. Kirkley was taking the letter, Government's Exhibit #1, out of this defendant's hands. I took him to the City Hall and booked him and he gave the name of Gee Toy. He was asked if his name wasn't Ah Tom and he said no. I scratched my initials on the material in the suitcase for identification, also on the envelope. [60]

Cross-examination.

(Questions by Mr. SAPIRO.)

This occurred between eleven and twelve in the morning. I met Mr. Haley at the City Hall to-

(Testimony of G. W. O'Neill.)

gether with the chief of police. They instructed Ohman to deliver this letter. He was told that we would follow him down there and we did. The other two officers went in first and I went to the rear. When I came in front Ohman had come out and Kirkley and Haley were inside. When I came in Kirkley was taking the letter out of the hand of defendant. Only a minute elapsed from the time I went to the rear until I came in the front of the store. The chief of police took the letter from the defendant. I don't know whether the letter was opened in the store and the baggage check taken out in my presence. There was no conversation about the baggage check in the store. I did not see the baggage check in the store. I have only known the defendant Gee Sue Tom to see and didn't know what his name really was until that time. I knew him as Gee Toy. I knew he was at Chu Kee's store. I knew his brother. They call him his brother. I had no business dealings with him. Never had any conversation with him prior to the 3d of May, 1922. When I took him to the station someone asked him if his name was Ah Tom and he denied it. Said his name was Gee Toy. Previous to the 3d of May, 1922, I didn't know under what name he went. He didn't tell me his name was Gee Sue Tom. I did not ask to see his certificate of identity.

**Testimony of F. D. Stribling, for the Government.**

F. D. STRIBLING, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

It was stipulated that if the witness would testify he would testify that the contents of the suitcase is cocaine, morphine, and opium. [61]

**Testimony of H. S. Keyes, for the Government.**

H. S. KEYES, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FINK.)

I live in Oakland and was formerly connected with the Internal Revenue Service and was in the service on May 9th, 1922. On that day I saw the defendant, Hon Won Chong, at Room 38, #1040 Stockton Street, San Francisco, about one o'clock in the afternoon. In the morning in company with Mr. Haley I made arrangements to get a special delivery letter and a mail carrier's uniform to deliver a special delivery letter to F. T. Henry, room 38, 1040 Stockton St., this city and county. I got the letter and the uniform about 10 o'clock. Government's Exhibit 4 for identification was the letter that was given to me to deliver to F. T. Henry at 1040 Stockton Street. I went there on May 9th and on my first visit did not find F. T. Henry there. I returned at one o'clock and went

(Testimony of H. S. Keyes.)

up to room 38 and a man who identified himself as F. T. Henry met me at the door. I asked him if he was F. T. Henry and he told me yes. I told him I had a registered letter for him. I identify the man who said he was F. T. Henry who is here known as Hon Won Chong and is sitting in the courtroom. Defendant Hon Won Chong signed the receipt in my presence.

At this point Government's Exhibit 4, being the registered letter, was introduced in evidence and received, and the registry return card was introduced in evidence and marked Government's Exhibit #8.

After the signature to the registry receipt I delivered the letter to defendant. He started to close the door and open the letter and I placed him under arrest and called for men outside and we searched room 38. We found Western Pacific Railroad ticket, Government's #5 for identification, among the papers in his pocket. [62]

At this point Government's Exhibit 5 for identification was introduced in evidence and given the same number, being Western Pacific ticket #182,646, showing passage from Oakland to Reno.

Cross-examination.

(By Mr. DAILY.)

Hon Won Chong spoke to me in English. I first saw defendant standing in the doorway of room 38. I handed him the letter after he signed the receipt. I asked him if his name was F. T. Henry. He



(Testimony of H. S. Keyes.)

said, "Yes." I said, "You sure? You have to sign for this." He said, "Yes." I said, "All right, you sign right there." He signed the card, F. T. Henry, and handed it back to me. I then handed him the letter. He did not say, "F. T. Henry is not here." He did not sign the word Henry first and hand it back to me nor did I say to him, and say, "You sign, F. T." He never attempted to open the letter in my presence. Room 38 is on the 3d floor, north side of the building. This is an apartment building occupied by numerous Chinese. The first time I went there a woman answered the door. She said she was F. T. Henry's wife.

### **Testimony of A. W. Roberts, for the Government.**

A. W. ROBERTS, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### **Direct Examination.**

(By Mr. FINK.)

I am narcotic inspector, Internal Revenue Service, and was in the service on May 9, 1922, at San Francisco. On that day I went to 1040 Stockton St. with Mr. Haley, Mr. Keyes and one or two officers. Mr. Keyes was dressed in a mail carrier's uniform. On our second visit at about one o'clock Mr. Keyes went in first and then gave us a signal and we went to Room 38 and Keyes had the defendant Hon Won Chong in custody. I saw Mr. Haley and Mr. Keyes find the ticket, Government's

(Testimony of A. W. Roberts.)

Exhibit 5, among the papers taken from the defendant's pocket. Mr. Haley put a memorandum on it. [63]

Cross-examination.

(By Mr. DAILY.)

We did not find anything else on this defendant or which came from him bearing the name F. T. Henry. The papers were mostly Chinese memoranda.

At this point Government's Exhibit #2 for identification, being the suitcase and its contents, was introduced in evidence and given the same number.

### **Testimony of J. H. McNichols, for the Government.**

Direct Examination.

(Questions by Mr. FINK.)

I live in Oakland; am railroad baggage agent for the Western Pacific at Oakland and have been such since December 4th, 1921, at that station, and was such on May 1st, 2d, and 3d, 1922. Government's Exhibit 6 for identification is a valuation slip which we require on all shipments on baggage checks. We have the passenger present the ticket. We have the baggage check on it and we have this slip placed out in front of him to sign his name, address, and the value. This he does his own self. We take it and place the baggage check that says the number of it on the slip that we attach to the baggage. This is the original record of the Western Pacific Railroad Company. I delivered it to

(Testimony of J. H. McNichols.)

Mr. Haley. When the baggage is checked upon a ticket, we have a punch to cancel the baggage privilege. On May 1st we had a baggage punch that punched "B. C." Government's Exhibit 5 has been used for checking baggage. Government's Exhibit 7 for identification is a similar punch mark to the one we used. I gave it to Mr. Haley. He had the ticket and we tried that to see if it was the same, compared them.

At this point Government's Exhibit 6 for identification, the valuation slip of Western Pacific Railroad, was introduced in evidence and given the same number. [64]

One man brought the suitcase in and had a party with him. They were both Chinamen.

At this point Government's Exhibit 3 for identification, the same being Tag 409250 upon the suitcase, was introduced and given the same number.

#### Cross-examination.

(Questions by Mr. DAILY.)

There were two Chinese there at the time this baggage was checked. I saw the Chinaman who signed the name to this valuation slip. He was standing right in front of me. I cannot identify him. I cannot say that this defendant Hon Won Chong was he.

Government rests, with permission to bring in further records of the Western Pacific Railway.

Mr. McGEE.—On behalf of defendant Gee Sue Tom, comes now the defendant Gee Sue Tom in

the above matter by his attorneys, C. A. A. McGee and J. H. Sapiro, and at the close of all the testimony in the case moves the Court to direct the jury to find him, the said Gee Sue Tom, not guilty upon the following grounds:

1. That the evidence adduced fails to prove a conspiracy, as charged in the indictment, for which the defendant could be liable in law to be put upon trial, convicted and punished.

2. That the evidence fails to prove that the defendant Gee Sue Tom was at any time connected with the or any conspiracy, if any, as charged in the indictment.

3. That the evidence does not tend to prove that defendant Gee Sue Tom was guilty in the manner and form as charged in the indictment, or at all.

4. That the indictment charges a conspiracy by the defendants to unlawfully possess certain narcotic drugs, to wit: 8 ounces of cocaine, 10 5-tael cans of smoking opium, 5 one-ounce [65] boxes of morphine. The evidence introduced does not show that the said Gee Sue Tom unlawfully possessed any narcotic drugs, as alleged in the indictments, nor that the said Gee Sue Tom was carrying on any business requiring him to register and pay a tax under the Act of Congress of December 19, 1914, as amended February 24, 1919, as set out in the indictment.

5. That the evidence does not show the inception and continuance of said conspiracy or that the defendant was a party thereto, or that he knew

of said alleged conspiracy, or that he participated therein, or that he committed any overt act, as charged in the indictment, or otherwise.

6. That the evidence does not show that the alleged conspiracy originated with the defendant or that he joined the conspiracy at its inception, but it shows that a suitcase was checked from Oakland, California, to Reno, Nevada, but does not show that it was the result of a confederation or conspiracy between the defendants, and there is not sufficient corroboration of the facts introduced by the Government to authorize a conviction of Gee Sue Tom.

I desire to eliminate one paragraph I have read in view of the indictment, which will be covered by another, and that is the paragraph referring to the registration, which is not set out in the indictment.

Mr. DAILY.—I desire to make the same objection as Mr. McGee for defendant Hon Won Chong, and to add that there has been no evidence introduced to show that he ever wrote or mailed the letter sent to Reno, Nevada, and delivered to Toy, or that he ever checked the suitcase, which it is alleged was sent from Oakland. There has been no evidence introduced, whatsoever, to connect the defendant Hon Won Chong with the *corpus delicti* at any time.

COURT.—The motion as to both is denied.

Exception saved. [66]



Mr. McGEE.—At this time, I desire on behalf of both defendants made at the beginning of the trial, presented by Mr. Sapiro upon behalf of the defendant Gee Sue Tom, objecting to the introduction of any testimony under the indictment on the ground that the same does not state facts sufficient to charge a public offense, and further moves the Court to quash the indictment at this time because the indictment does not charge any offense under the laws of the United States, and because the said indictment does not set forth how or in what manner the alleged possession of said narcotics was unlawful. And furthermore that said indictment does not state facts showing that the alleged possession was accompanied by such a purpose or intent or under such circumstances as to render it a violation of any law. The facts averred are consistent with the alleged provision of the Narcotic Act being lawfully permitted. I call your attention to the fact that there are two indictments and we are proceeding under indictment 11,132, and nowhere in this indictment, I have read it very carefully, is it alleged that either of them failed to register or failed to pay the tax nor has the Government in any instance introduced a single witness to prove either Gee Sue Tom or the other defendant has failed to register or pay the tax. The presumption is, your Honor, in this case as in all criminal cases that if either of these defendants were in possession of any narcotics they were legally in possession of the narcotics, and that presump-

tion obtains until it is overcome. Now, the indictment, itself, fails to make any allegation whatsoever with reference to the fact that neither of them registered and neither of them paid the tax, and for that reason we renew the motion made and ask at this time that the indictment be quashed and that the jury be directed to return a verdict acquitting each of the defendants and that they be discharged from the custody of the law. [67]

Mr. SAPIRO.—The Court will remember the opening statement of the district attorney. He said as the chief violation complained of, that these men had not registered and had failed to pay the tax as required by law. I presume your Honor is very familiar with the Harrison Narcotic Act. The Act provides, among other things, that it shall be illegal to have these narcotics unless these people have registered and paid the tax. In other words, there is a provision in the law which permits the possession—mind, there is no sale charged here or illegally prescribing—permits the possession, providing the person has registered.

COURT.—And pays a tax.

Mr. SAPIRO.—And pays a tax. Now, I want to call the attention of the Court to one of the records of this Court, and this indictment; in case 11,785 in which the Government has reindicted these men on the identical charge after this indictment was brought, and in that indictment, if the Court please, the specific allegation denying that these

two men were merchants or were dealers and had failed to register and pay the tax, is set out.

COURT.—That was filed subsequent to this?

Mr. SAPIRO.—Filed subsequent to this indictment.

Mr. FINK.—We are on trial on the last indictment which was returned by the grand jury in this district.

Mr. SAPIRO.—I beg your pardon. There is the indictment we are on trial on; the Court has it in its hand.

Mr. FINK.—That is not the intent. If you will refer to my opening statement, you will note that I carefully quoted the language of the last indictment in this case.

Mr. SAPIRO.—And if you will refer to my opening motion, you will see that I called the Court's attention to the number of the indictment and the one we are proceeding on. That was the purpose of my motion. [68]

Mr. McGEE.—You may remember we asked the clerk which we were proceeding under and he handed me that indictment which is in your Honor's hands now.

COURT.—Doesn't the record show?

CLERK.—Yes, your Honor, the record shows. I will get the record.

Mr. FINK.—There are two indictments in this case, may it please the Court.

COURT.—I haven't any doubt about either of them, as far as that goes, but would like to see which

one you are proceeding under. I will say, Mr. McGee, that since your motion of yesterday, I compared this first indictment with the decisions and am perfectly satisfied with it.

Mr. FINK.— . . . Investigation discloses the fact that the record shows we are now on trial on indictment #11,132. There are two indictments in the case. The other indictment is #11,785. I first desire to direct the attention of the Court to the fact that indictment #11,132 was filed in this Court on May 16, 1922, and that indictment #11,785 was filed upon September 29, 1922. Upon indictment #11,132 all the preliminaries were completed upon July 6, 1922, and the case was in a condition to be set. Upon indictment #11,785, all of the preliminaries were completed upon October 11, 1922, and the case was in condition to be tried . . . Now, here we have a situation where one indictment #11,132 was returned and another indictment #11,785 was returned to correct what we believed to be an error in the first one, so that we have the identical defendants; we have the identical set of dates; we have the identical charge, and I take it that the only question left then, is as to whether this Court at this time has the right to consolidate . . . I therefore at this time move the Court that the motion of defendants' counsel be denied and the two indictments be consolidated for trial—in other words, that #11,132 and #11,785 be consolidated. [69]

COURT.—Let me ask you, Mr. Fink, in the first indictment, was there any demurrer interposed to that?

Mr. FINK.—“No preliminary motions of any kind, either demurrers, motions to quash, plea in abatement, or any other kind has been interposed to either indictment. So the record shows just the indictments, absolutely nothing else. Now, if it please your Honor, may I recite this fact to the Court that at the time I made the opening statement in this case I made that statement from a carbon copy of the corrected indictment, and that statement was fully made from that carbon copy which I have in my folder and the defendants knew and defendants’ counsel knew that I did make my statement from the corrected indictment; in support of that I call your attention to the remarks of Mr. Sapiro on page 76 of the record.”

Counsel thereupon reads from the reporter’s transcript the remarks of Mr. Sapiro last hereinabove set forth, being his argument on the pending motions. Mr. Fink continues: “I cite that and ask its comparison by the argument made by Mr. Sapiro at the time I introduced my first witness, Mr. Kirkley, and found upon page 1 of the record, in which no motion is made or anything, of that kind, and I call your attention that upon statement of counsel for defense himself there can be no confounding of these defendants in their defense in that they admit that these two indictments are identical, and that the charges are identical, and



that the men charged are identical. I therefore renew my motion that these two indictments be consolidated and that we proceed.

Mr. SAPIRO.—To which motion of the district attorney defendants and each of them object. The district attorney has a right to bring whatever charge he sees fit, provided a proper indictment is on file, in the order he sees fit for the trial before the Court, and having elected by setting this case down for trial, if the Court please, he is bound by his own election in bringing this case to trial.

The COURT.—Well, Mr. Sapiro, he did not elect; as a matter of fact the only thing in the record is the clerk's record which [70] contains the number of the first indictment. Mr. Fink when he made his opening statement to the jury stated the contents of the indictment as contained in the last one, and not the first, that is to say, he said he was going to trial upon an indictment which alleged that these were persons who were required under the statute to register, and that they had not done so, so I don't consider it as a case of clear election by the district attorney to proceed under one indictment.

COURT.—As I said the other day, Gentlemen, I have no doubt whatsoever that the first indictment states facts sufficient to charge a conspiracy. It alleged a conspiracy to violate the Act of 1914, as amended in 1919, entirely sufficient to call the attention of the defendants to the nature of the charge. Then the district attorney has followed

that up with an indictment by the grand jury charging exactly the same offenses in which there is asserted the omission that charges these defendants were persons who were required to register and had not done so. The motion to dismiss the first indictment will be denied. The motion to consolidate the two indictments for trial and to proceed will be granted *nunc pro tunc* as of the beginning of this trial. It is true that the exact question has not been presented, but it does not seem to me that this Court is so impotent, where the defect is a mere matter of error of designation of a number, because that is all it amounts to, that it is required to dismiss the charge and go forward under a new indictment. The motion of the district attorney will be granted and we will proceed.

Mr. SAPIRO.—To which the defendants, and each of them, take an exception as to both parts of the Court's ruling; that is as to the dismissal, we take a separate exception, and as to the [71] consolidation we take a separate exception.

COURT.—Exception allowed to both defendants.

Mr. FINK.—Now, the consolidation will require the presentation of evidence upon the second indictment unless the defendants' counsel are now willing to stipulate that all of the testimony introduced in 11,132 shall be considered as testimony also in 11,785. I assure the Court there is not the least variation in the testimony. It is the same thing in both indictments and if defendants' coun-

sel will stipulate that it may be regarded as offered in both, I think we can proceed. . . .

Mr. McGEE.—May it please the Court, leading up to the stipulation and immediately prior to taking it up, I desire at this time to make a new motion. The record now discloses that the motions of the defendants and each of them to quash indictment 11,132 and abate the action and to direct a verdict have been overruled as to each of said defendants; that the motion of the district attorney to consolidate indictments 11,132 and 11,785 has been granted by the Court and the Court has entered a *nunc pro tunc* order as of the commencement of the trial with reference to the consolidation. At this time and at this juncture, comes the defendants Gee Sue Tom and Hon Won Chong and renew the identical (original?) motion made with reference to 11,132 *in haec verba* and upon all the grounds stated as to the motion to quash and to abate and to direct a verdict, and further and in addition thereto enter at this time a plea in bar upon the ground that jeopardy has attached under indictment 11,132, and may we have a ruling upon that.

COURT.—The motion will be denied, and the plea of once in jeopardy will be overruled. Exception saved.

Mr. McGEE.—Then, your Honor, I would make this offer without prejudice and reserving at all times our legal rights as to each and both defendants that if the district attorney is to [73] pro-

ceed under the order of consolidation and is to introduce evidence, as he says, by the same identical witnesses, the same identical testimony, we would stipulate that over our objection, if they were permitted to testify, their testimony would be the same identical testimony offered in 11,132, preserving all rights unto ourselves . . . waiving our rights under the Sixth Amendment to the Constitution of the United States only.

COURT.—Mr. Dailey, will you make the same stipulation as Mr. McGee?

(Conference between counsel.)

Mr. McGEE.—Counsel agrees that the stipulation may go as to his client in view of the reservations that we have made, and with a further understanding that when the testimony is offered, we will make a blanket objection and move to have it stricken.

Mr. FINK.—I now make formal offer of the testimony of Messrs. Kirkley, Haley, Ohman, O'Neill, Keys, Roberts, and McNichols, on both direct and cross-examination as heretofore given. The testimony of Mr. Stribling, also. That testimony is offered as applying to indictment 11,785 as well as to 11,132.

Mr. McGEE.—I understand the district attorney includes in that offer all the objections, exceptions, rulings of the Court, and exhibits.

COURT.—All proceedings whatsoever.

Mr. McGEE.—Now, at this time, comes the defendants Gee Sue Tom and the other one and ob-

(Testimony of J. H. McNichols.)

jects to the reception of any testimony on all the grounds heretofore stated incorporated *in haec verba* and the additional ground that it is incompetent, irrelevant and immaterial and that the said defendants have heretofore been placed in jeopardy and also move that all the testimony applicable to the consolidation of the action #11,785 be stricken from the record, and that the jury be instructed to disregard it.

COURT.—Objection overruled. Motion denied. Exception saved.

**Testimony of J. H. McNichols, for the Government  
(Recalled).**

J. H. McNICHOLS, a witness produced on behalf of plaintiff, being recalled on behalf of plaintiff for further direct examination, testified in substance as follows: [74]

Direct Examination.

(Questions by Mr. FINK.)

I have with me the waybilling baggage out record of the Western Pacific Railway covering from April 19, 1922, until May 20, 1922. Marked Government's Exhibit 9. There were two Chinese delivered this suitcase to me on May 1st. One of them had a railroad ticket Western Pacific to Reno. He presented that ticket and the suitcase to be checked. I presented the valuation certificate for him to sign. He refused it, saying he couldn't write. I told him I couldn't check it without he



(Testimony of J. H. McNichols.)

signing the valuation slip and he stepped back and had a conversation with the other Chinaman and came forward again and signed it and put a value on it of \$25 with the name F. T. Henry. I checked his ticket.

Cross-examination.

(By Mr. DAILY.)

Government's Exhibit 6 was signed by the Chinese and Government's Exhibit 5 was the ticket presented to me. I identify the ticket as the one by the station stamp on the back, May 1st, Oakland Depot, also the number. I looked up the numbers and that is the only ticket sold that day. And that is the ticket upon which the baggage was checked, and it was the only ticket that was sold that day to Reno.

Whereupon the plaintiff rests its case in chief.

Mr. McGEE.—I think, your Honor, as to the defendant I represent, Gee Sue Tom, I will waive the opening statement. I presume Mr. McNichols, having been called out of order, it is not necessary to revive the motion for a directed verdict. That is considered as having been made together with all other motions.

COURT.—You certainly have covered that point.

The defendants, to maintain the issues on their part to be maintained, introduced and offered in evidence the following testimony: [75]

**Testimony of Hon Won Chong, for Defendants.**

Defendant HON WON CHONG, being called in his own behalf and being first duly sworn, testified as follows, through Interpreter H. EMBERT LEE, also duly sworn:

**Direct Examination.**

(By Mr. DAILY.)

I was born in China, Gin Pang District, 26 years ago; studied English in a school in China for a little over a year. While I went to school I did some kind of business. I came to the United States March 22, 1922. At this point he produced his certificate of identification issued by the labor department, marked Defendant's Exhibit "A." When I first came to the United States I lived on Stockton Street for 11 or 12 days. I went to Vallejo about March 25 or 26th and stayed there over a month, where I worked in a Chinese store as a cook. Came back to San Francisco about the 6th or 7th of May. I was not in San Francisco on May 1st, 2d, or 3d. I never saw the defendant Gee Sue Tom or knew of him until I met him in the courtroom in September. Never saw him before that day. When I returned to San Francisco on May 8th, Fong Ting wanted me to keep his room for him. That was room 38, #1040 Stockton Street. I never mailed Government's Exhibit 1 to Gee Toy at Reno, Nevada, and I never saw that letter before. None of the writing on that letter was put on by me. I am not F. T.

(Testimony of Hon Won Chong.)

Henry, 1040 Stockton Street, San Francisco, shown on that letter. I have never seen its contents. I have never seen Government's Exhibit #6 before and never signed F. T. Henry's name to it, nor is that in my handwriting. I never purchased Government's Exhibit 5, the ticket to Reno. I was not in Oakland, California, on May 1, 1922. I was in Vallejo that day. I never checked any baggage from Oakland to Reno, Nevada, on May 1st or any other day. I never placed Government Exhibit 3 on the suitcase. Government's Exhibit 5, ticket, was handed to me by Fong Ting about May 6th or 7th. He gave me [76] the ticket and the key of the mail-box to keep until he came back. I never had baggage check #409250. I do not know Fong Ting by any other name. At the time he gave me the ticket he told me to keep the ticket and the keys and to watch his room until he came back. I have seen Government's Exhibit 8 before. About the 9th of May the postman came up and handed me this card and also a pencil for me to sign this name and I signed that name on the card. I signed the name because Fong Ting instructed me when he left, if any mail comes for F. T. Henry to take care of it. I am married. My wife and children are in China but were not at 1040 Stockton Street on May 9th. I have never been in Reno, Nevada, or in Oakland, California. I have never seen suitcase Government's Exhibit #2, nor its contents before this. I never agreed with anybody to possess any of the contents of that suitcase, nor

(Testimony of Hon Won Chong.)

did I have any understanding with anybody relative to that suitcase or its contents. The postman just gave me Exhibit 8, the card, but he never gave me the letter. When he gave me the card he had the letter in his hand. I first saw the letter May 9th. I learned to write English in China. I never signed the name F. T. Henry before I signed it on this card. I never received or sent any mail in the name of F. T. Henry. I signed the name F. T. Henry on this card because he told me if any letter comes in the name of F. T. Henry for me to sign receipt for it.

Cross-examination.

(By Mr. FINK.)

I got to Vallejo by boat about March 25th or 26th. I first landed in San Francisco March 15th. Defendant's Exhibit "A" was given to me about six or seven days after that. After I was landed on March 15th I was in San Francisco for 11 or 12 days. I stayed in Vallejo a little over a month, and came back to San Francisco about May 6th or 7th by boat. I first lived at 721 Clay Street for about ten days. About two days after I landed I first [77] went to 1040 Stockton Street at room 33. I never was in room 38 until about May 7th. I usually went to room 33 and took my meals there every day, commencing with two days after I landed. The name of the man in room 33 was Yee Gock. He was my father's old friend. I never saw him before I came to San Francisco. The man in room 38, Fong Tin, was not a relative of mine.

(Testimony of Hon Won Chong.)

I met him once or twice in the hallway after I landed. After I quit my work in Vallejo I came to San Francisco. I took my grip up to 1040, room 33, but found that Yee Gock and his wife were not there and I was going out and I met Fong Ting in the hallway and he asked me to come into his room. This was on May 7th. I went to his room and he and I were there alone. On the 9th only myself was in the room. On the morning of May 9th I was out taking a walk after I had my breakfast in Yee Gock's room. I left between 10 and 11 in the morning and came back after 12. I had a key to room 38 from Fong Ting and I don't know who all had keys. When Fong Ting gave me the key he also gave me the Government's exhibit 5, the ticket. That is all. He gave me the key, also the ticket, to keep until his return. Nothing else. When postman knocked on the door he asked me if F. T. Henry is in. I told him F. T. Henry was not at home. I did not understand anything else he said but he gave me pencil and also that card. I did understand what he said when he asked me whether F. T. Henry was home and I answered him in English. I had no other conversation that day with anybody in English. That is the only mail that I took for F. T. Henry. Prior to the 9th day of May, 1922, I never wrote the name of F. T. Henry in English. I never started to open the registered letter, for the letter was in his hands. I just signed the card. He never gave me the letter. I do not know what morphine, cocaine, or



(Testimony of Hon Won Chong.)

smoking opium is, nor ever heard of any one of them. Henry told me to give a receipt for any registered mail that came for him. He didn't tell me anything further to do about the mail; he especially [78] mentioned registered letter and told me any letter or anything came to receipt for it. I did not know what kind of a [79] paper that was, so I put the ticket in my pocket. I worked in Bakersfield after the 20th of May. I never talked to the officers about Bakersfield on May 9th, and deny that in the presence of H. S. Keyes, Mr. Haley and Mr. Roberts, state that I had been in Bakersfield. It might have been the other boy who was there at the time, who came along at the time they arrested me. The woman belonged to the room across the hall. She was not in my room at the time the officers came. I did not make any statement to the officers relative to this woman. Fong Ting said he would be back three or four days later. I never saw him any more after that. The officers did not ask me anything about the railroad ticket.

Redirect Examination.

(By Mr. DAILY.)

I first went to Bakersfield after the 20th of May, 1922. When I first arrived in San Francisco, I went to 1040 Stockton Street every day to take my meals with Yee Gock. I first met Fong Ting there around the 18th or 19th or 20th of March. When I was landed from the Immigration my father took me to his personal friend, Yee Gock, introduced

(Testimony of Hon Won Chong.)

me to him. My father was too busy and had to go back to Fresno to work and could not stay here longer for me to get my certificate of identity. So he put me in trust to Yee Gock until I got the certificate of identity and in case he find work for me, put me to work. That is what I was doing at apartment 33, #1040 Stockton Street.

Recross-examination.

(By Mr. FINK.)

On May 7th my grip was in room 38 with some clothes in the grip.

**Testimony of Gee Sue Tom, for Defendants.**

Defendant GEE SUE TOM, being called in his own behalf and being first duly sworn, testified as follows, through interpreter H. Embert Lee, also duly sworn: [80]

Direct Examination.

(Questions by Mr. McGEE.)

I was born in San Francisco; about 49 years old; made two trips to China. At this point, Defendant's Exhibit "B," being certificate of identity of the witness, was introduced in evidence, which bears the name Hong Sue. I have lived in Reno about 19 years and have a boy, Richard Thomas Sue. At this point Defendant's Exhibit "C" was introduced, being the certificate of registration of his son, Richard Thomas Sue. I lived in San Francisco about three years during the war. About May or June, 1921, I went back to Reno to take

(Testimony of Gee Sue Tom.)

up my permanent residence. I was in San Francisco about September or October, 1921, when my wife came from China. During the year 1922 up to the time of this indictment I had not been in San Francisco. I never knew or met the other defendant Hon Won Chong, *alias* Henry. I had no occasion to correspond with him or telegraph or telephone him, nor did I ever write him any letters. I never got any letter from him, except Government Exhibit 1.

Q. Were you expecting his letter?

A. I didn't know where it came from. And I know no such man as Henry. I never received or had in my possession from Henry or anyone else any opium or morphine or derivative of opium or morphine or drugs of that character. My business is that of laborer. I work in a car shop at Sparks, Nevada, about four miles from Reno. Last year I waited on table at the station at Sparks. I have also done carpenter work and used to work in a laundry at Reno. I never had any interest in any store in Reno. I know where the Chu Kee store is and I live in a house a step and a half to the rear of the store, but it is not connected with the store. I have frequently been in the Chu Kee store and it is a Chinese general merchandise. It is owned by my brother-in-law. I have no interest in that store, but I am around that store frequently and the Immigration Bureau has the list and they know who is who in that store. I am a registered voter in Reno. I have known

(Testimony of Gee Sue Tom.)

Chief [81] of Police Kirkley for five or six years. I never went by the name of Gee Toy, nor did I ever tell him my name was Gee Toy. About three days after I was arrested he called me Gee Toy, but I didn't respond to him. All Americans call me Tom. My registered name as a voter is Tom Sue. I never knew Gee Toy. Just prior to the 3d of May I did not receive any special delivery letters as testified by Mr. Ohman, but a long, long time ago I received one. On the 3d of May after my meal I went over to the store and the proprietor told me to watch the store for him. The postman came in and I was sitting down and I got up and walked to the counter. He said, "Here is a letter for your store and the address is wrong." He handed me the letter and I just took and opened it and dumped the check out on the counter. Chief of Police and other men came and I asked them what is the matter and he told me but I didn't understand English and called for a Chinese by the name of Walter to interpret for me, that there was nothing wrong and not to pick up anything until the boss came back. The postman handed me the letter (illustrating). The postoffice had opened the letter. After putting this seal on. I just run my thumb over it to open it and dumped that check on the counter and they came and arrested me. About a minute after he gave me the letter they came and arrested me. When I got the letter I didn't know there was a baggage check in it. I had not been expecting it. I never saw the suitcase,

(Testimony of Gee Sue Tom.)

Government's Exhibit 2, before I was arrested, nor its contents and was not expecting them by express or by baggage transfer or any other way. I never had any dealings nor agreement or understanding with anybody with reference to this case and these drugs or any suitcase or any drugs. I never was known to anybody as Gee Toy. I never knew a Mr. Henry in Stockton, California, or of Stockton Street, San Francisco, California, and I do not recognize the handwriting on the envelope. I did not have a bank account at this time anywhere. I did not have [82] any money to pay for a thousand dollars worth of drugs. It was not for me. I haven't got any money. My person and store was searched at the time of the arrest. Just searched a little bit. I did not, on May 1st or any other time, ever have an agreement in writing or telephone or by telegraph, that I and Hon Won Chong, sometimes called Henry, were to have in our possession drugs.

Cross-examination.

(Questions by Mr. FINK.)

I was born in the United States; was educated in China and never went to school in the United States. I was four years old when I went to China and stayed there about twenty years. I am known by the names of Tom Gee Sue or Gee Sue Tom. All American people in Reno call me Ah Tom. Hong Sue, that is my name. I was never known as Gee Fox Song. Gee Fook Sang is my brother-in-law. At the time I went back to Reno and took



(Testimony of Gee Sue Tom.)

charge of the store, Gee Fook Sang was in jail. He was in the store in the month of May, 1922. I don't know where he was in jail. He went before I came to Reno. I didn't visit him while he was away. When I was at leisure I went to that store and sometimes I went there to buy provisions. When I was working I may have been in the store and when I was not working I spend a little more time there. In the month of May, 1922, I was not working. It is pretty hard to say how much time I put in there. I know Chief of Police Kirkley but I never talked to him. I did not always go back of the counter. I had nothing to do with the mail in the store. About three or four minutes before they delivered this letter the proprietor of the store having the intention to lease a new building, told me to look after the store while he took the lease up to see his attorney. I went back to Reno in 1921 to take over an old laundry I used to have, but it didn't come up. The postman told me the letter was for us, but was misdirected, so he asked me to open it. Just myself and postman in the store at that time. I understood in a common way [83] what the postman said to me but I opened the letter and they came and arrested me. Very seldom had I been left in charge in the store. I don't remember how many times I watched the store, but I had been asked at other times. I had never seen Mr. Ohman before May 3d and he never delivered a letter to me before that time. I know what smoking opium is but I do not know what morphine or cocaine is.

(Testimony of Gee Sue Tom.)

Redirect Examination.

(Questions by Mr. McGEE.)

On First Street in Reno there are some Chinese boys working there that I know of.

Whereupon defendants rested their case in chief.

The interpreter then read into the record the letter in Chinese, Government's Exhibit #1. This letter is addressed to Duck Sung, written by Jak Hing. "Now, I forward by railroad express one suitcase and kindly get it. Inside contains ten pieces wooden at seventy-seven, total \$770, and ten sacks of grain sugar at twenty-three, \$230, and square sugar, five boxes at twenty-six, \$112, total, \$1,112. Please send me check for the above." The Chinese on the face of the envelope was interpreted to read, deliver this to Duck Suy.

The Chinese characters that appear on the envelope, Government's Exhibit #4, in evidence, was interpreted to read, deliver this to Soo Hoo Yee Wai.

**Testimony of H. S. Keyes, for the Government  
(Recalled in Rebuttal).**

H. S. KEYES, recalled in rebuttal as a witness in behalf of the plaintiff, testified in substance as follows:

(By Mr. FINK.)

On May 9, 1922, at room 38, 1040 Stockton Street, Defendant Hon Won Chong told me he had lived at Bakersfield and that the woman in the room was his wife. The conversation was in English, and he

(Testimony of H. S. Keyes.)

said nothing about the ticket. [84] Hon Wong was standing in the doorway of #38. I asked him if his name was F. T. Henry. He said, "Yes." I said, "Are you sure?" He said, "Yes." I said, "I have a registered letter for you, you will have to sign for it," and gave him the orange card. He signed it and I gave him the letter and arrested him.

Cross-examination.

(By Mr. DAILY.)

He identified himself by telling his name. He said he was sure he was F. T. Henry. The conversation was in English, good English. I asked him if this woman was his wife after the other officers came in. There was a Chinese baby about eight months old there. I asked her if she was his wife and she said "Yes."

**Testimony of P. A. Robbins, for the Government  
(In Rebuttal).**

P. A. ROBBINS, a witness called by the Government in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. FINK.)

I am an inspector in charge of the United States Immigration Service, San Francisco. I am familiar with the identification certificates given to Chinese. Witness was shown certificate of Hon Won Chong. This certificate was issued March 23. It shows that the holder was admitted at San Francisco

(Testimony of P. A. Robbins.)

on February 15, 1922, on the steamer "Hoosier State." February 15, 1922, may be the date of the admission or of the arrival of the boat.

Cross-examination.

(By Mr. McGEE.)

It frequently happens when an immigrant comes from the Orient it sometimes takes ten days or three weeks or sometimes more to land. It would be impossible for me to state from looking at this certificate whether this is his first, second, or third arrival. [85]

**Testimony of A. W. Roberts, for the Government  
(Recalled in Rebuttal).**

A. W. ROBERTS, recalled in rebuttal as a witness on behalf of plaintiff, testified in substance as follows:

(By Mr. FINK.)

On the 9th of May, 1922, at room 38, 1040 Stockton Street, defendant Hon Won Chong, when we questioned him about some checks in his pocket, he explained to us that he had lived at Bakersfield. The defendant Hon Wong Chong, on being questioned, stated that the woman in the room was his wife, and on her being questioned, she stated the same. The conversation was in English.

Cross-examination.

(By Mr. DAILY.)

I have not the checks and I do not remember whether the names F. T. Henry and Hon Won Chong were on the checks.

**Testimony of H. Haley, for the Government  
(Recalled in Rebuttal).**

H. HALEY, recalled in rebuttal as a witness on behalf of plaintiff, testified in substance as follows:

(By Mr. FINK.)

On May 9th, 1922, at 1040 Stockton Street, defendant Hon Won Chong told me he had been to Bakersfield and lived there. These were not checks that he had. They were duplicates of drafts of money sent to China. I always knew the defendant, Gee Sue Tom as Gee Toy; I have sometimes heard him go by the name of Ah Tom.

**Testimony of J. M. Kirkley, for the Government  
(Recalled in Rebuttal).**

J. M. KIRKLEY, recalled in rebuttal as a witness on behalf of plaintiff, testified in substance as follows:

(By Mr. FINK.)

I know the defendant Gee Sue Tom, *alias* Gee Toy, by the name of Tom and Ah Tom.

WHEREUPON the plaintiff rested its case in rebuttal. [86]

**Testimony of Hon Won Chong, for Defendants  
(Recalled in Surrebuttal).**

HON WON CHONG, a witness produced in surrebuttal on behalf of defendants, being first duly sworn, testified in substance as follows:

(Questions by Mr. DAILY.)

I was never in Bakersfield, California, prior to



May 9th, 1922, and did not tell the narcotic officers that I had been there prior to May 9, 1922. I did not tell the officers that the woman at apartment 38, 1040 Stockton Street was my wife.

WHEREUPON the defendants rested their case in surrebuttal.

Mr. McGEE.—At this time, briefly, and by reference merely, we renew *in haec verba* and on all the grounds and points the motions made to quash, abate, and ask the Court at this time to direct the jury to return a verdict for the defendant, Gee Sue Tom.

COURT.—Motion denied.

Mr. DAILY.—Same motion for Hon Won Chong.

COURT.—Motion denied.

Exceptions allowed in both cases.

The foregoing contains a resume of the testimony and evidence, both oral and documentary, and a full and complete statement of the proceedings in the case. At the close of the arguments of the respective counsel, the Court charged the jury, as follows, and the following are the instructions given by the Court to the jury:

### Instructions of the Court to the Jury.

The COURT (Orally).—Gentlemen of the Jury: In this case there are two indictments. These indictments, however, charge but a single offense and upon them you can render but a single verdict, of either guilty or not guilty. That is to say, you are, for the [87] purposes of your verdict, to consider

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the second indictment as a mere amendment or correction of the first.

Now this indictment charges that these defendants entered into a combination or conspiracy by which they agreed to violate the Act of Congress, which is commonly known as the Harrison Narcotic Act. That is to say, they agreed together between themselves and various other persons, that they would have in their possession opium, morphine, and cocaine without having registered or having paid the tax thereon.

You are instructed in the first place, that under the Act of Congress mentioned in this indictment, it is a crime to have in possession opium, morphine, or cocaine, unless the person so having in possession has registered and paid the prescribed tax. There is no claim or pretense here that either of these defendants has registered or paid the tax, and, therefore, the possession of these drugs by either of them would constitute a crime against the United States. It is not necessary for the Government to show failure to register or pay the tax if it shows possession. In this connection, I instruct you that if you find that either of the defendants had in his possession a baggage check entitling him or them to the possession of the suitcase containing any of these drugs, then the possession of such check with knowledge of the contents of the suitcase and intent to procure the suitcase is, in law, the possession of the drugs. But these defendants are not charged with having the drugs in their possession. They are charged with a conspiracy so to do.

You are instructed that a combination, agreement, and conspiracy, which has as its object the having of these drugs in possession without registering or paying a tax is a crime against the United States. That is to say, it constitutes the crime of conspiracy. [88]

A conspiracy is defined as an agreement or combination between two or more persons to do an unlawful act, or to do a lawful act by unlawful means. The charge here is that there was an agreement and combination to violate the statute; that is, to commit an unlawful act. Common design is the essence of the charge, and while it is necessary to establish the conspiracy, to prove a combination of two or more persons by concerted action, to accomplish the unlawful purpose, it is not necessary, to constitute conspiracy, that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what that unlawful scheme was to be and the details of the plan or means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, each one of said persons becomes a member of the conspiracy, although the

part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirator or conspirators.

A combination formed by two or more persons to effect an unlawful end is the conspiracy, said persons acting under a common purpose to accomplish the end designed. Furthermore, where several persons are proved to have combined together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerted plan and with reference to the common object is in contemplation of law, the act of the whole party and therefore the proof of such act will be evidence against any of the others who were engaged in the same conspiracy. [89]

Nor is it necessary that the Government should prove by direct evidence the entering into the unlawful combination or agreement. That combination or agreement may be proved, like any other fact, by circumstantial evidence, and if you are satisfied beyond a reasonable doubt that there was a combination or agreement from all the facts of the case, you are entitled to find there was such combination or agreement. You will readily understand, then, that if you find from the evidence that Hon Won Chong and Gee Sue Tom came to an understanding or agreement in any manner whatsoever that they should have in their possession opium, cocaine, or morphine, without registering and without paying the tax, and if you further find that in pursuance of that agreement either one or both of them did have possession of such drugs without registering or paying the tax, then I in-

struct you that the crime of conspiracy is complete and you must find the defendants guilty.

In order to find them guilty, you need not find there was an agreement in so many words. It is sufficient if you find from all the evidence that there was a meeting of their minds upon the subject, followed by the actual possession of the drugs by either of them. A conspiracy, like an ordinary contract, is established when the minds of the parties meet in an agreement to do a definite thing. The agreement or meeting of the minds need not be in writing. It need not even be expressed in so many words. It is sufficient, if there is an agreement of two or more persons, to carry out and execute some unlawful purpose and some act or acts done in pursuance of that agreement. This joint assent of minds may be proved by direct testimony or may be inferred from facts which would satisfy the jury that an unlawful combination has been formed. It is not necessary that all of the parties have met together and come to an explicit and formal agreement, or that they should agree formally upon all of the details or plans by which the unlawful combination [90] should be made effective. That inference is sufficiently proven if the jury is satisfied beyond a reasonable doubt that the parties have entered into an agreement to accomplish the common and unlawful design which was arrived at by mutual understanding, followed by some act done by any of the parties for the purpose of carrying it into execution.

It is not necessary that each of the parties should in person commit the unlawful act if such unlawful



act is a part of the plan for which the combination was formed, for if the unlawful agreement has been proved, the act of one in pursuance of said unlawful agreement is considered the act of all. Each may perform separate and distinct acts in forwarding the design, and proof is not required of participation by each in every step by which the unlawful scheme is carried forward.

Before you consider whether or not any overt act was committed you must find from the evidence beyond a reasonable doubt that a conspiracy existed as alleged in the indictment. And proof of the overt act is not in and of itself proof of the conspiracy, because the overt act must be an act independent of the conspiracy and subsequent to and following the conspiracy and done or performed for the purpose of effecting the object of said conspiracy.

You may, however, consider any overt act which you may find was proven as evidence bearing upon the question as to whether there was a conspiracy. The overt act must be one independent of the conspiracy or agreement and the proof must establish beyond a reasonable doubt that the conspiracy or agreement which is set forth in the indictment and which is the gist of this case had been formed before and was in existence at the time of the overt act.

I have said to you that the offense may be established by circumstantial evidence, but circumstantial evidence, to warrant a conviction in a criminal case must be of such a character as to [91] exclude every reasonable hypothesis but that of guilt

of the offense imputed to the defendants, or, in other words, the facts proved must be all consistent with and point to their guilt only and inconsistent with their innocence. The hypothesis of guilt should flow naturally from the facts proved and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or guilt the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted.

The defendants in this case, as in all criminal cases, are presumed by law to be innocent. This presumption is not *be* be regarded by you as a mere fiction of the law, but it is a fixed fact in the case to be considered by you during the taking of the testimony and to remain in your minds as such fixed fact during all the steps in this proceeding, and even in your deliberations in the jury room until verdicts have finally been reached. This presumption of innocence is, of itself, unless overcome by proof satisfactory to you beyond a reasonable doubt, sufficient to warrant an acquittal.

In this case an indictment has been returned by the grand jury against the defendants, and the defendants and each of them are being tried under that indictment. The mere fact that these defendants have been indicted is no evidence against them or either of them in any shape or manner, either directly or indirectly, or by intendment, inference, or presumption.

By reasonable doubt is meant such a state of the juror's mind after comparison and consideration of all the evidence, he cannot say he feels an abiding

conviction amounting to a moral certainty of the truth of the charge. This doctrine of reasonable doubt is to be applied by you to every material element of the offense charged, and should you entertain reasonable doubt as to the truth of any material element of the offense charged, it will be your duty to [92] resolve this doubt in favor of the defendant and acquit him.

The Court instructs you that the defendants have been examined as witnesses in their own behalf, and in considering the weight and effect to be given to the evidence of either or both of the defendants you may consider the manner and demeanor of each upon the witness-stand, the probability of the statements made by each of them taken in connection with all the evidence in the case, and if convincing and carrying with it a belief in its truth, you must act upon it. If not you have a right to reject it. You are, however, entitled to take into consideration the interest which such defendants have in the outcome of the case in weighing the evidence.

One cannot be convicted of a conspiracy unless there was an agreement with some other person to violate the law. If you find one of the defendants not guilty you cannot find the other defendant guilty unless you are convinced beyond a reasonable doubt that such other defendant conspired with some person or persons unknown.

**JUROR.**—May I ask a question? In the beginning of your instructions with reference to the railroad ticket, I did not get that quite clearly.

**COURT.**—I instruct you that if you find that

either of the defendants had in his possession a baggage check entitling him or them to the possession of a suitcase containing any of these drugs, then the possession of such check with knowledge of the contents of the suitcase and an intent to procure the suitcase is in law possession of the drugs.

Mr. SAPIRO.—Will your Honor please read the very next sentence—they are not charged with possession.

COURT.—I read that, Mr. Sapiro.

Mr. SAPIRO.—Shall we take our exceptions now?

COURT.—Yes, exceptions not taken in the presence of the [93] jury are deemed waived.

Mr. SAPIRO.—May it please the Court, defendants and both of them take exception to that portion of the Court's charge referring to the possession of the baggage ticket, and particularly the following suggestion; where the Court said, these persons are not charged with having possession, inasmuch as the overt act charged in the indictment is possession contrary to law.

Second. The defendants and each of them except to the charge of the Court at the commencement thereof where it charges the jury that the second indictment is to be taken as an amendment to the first indictment.

Third. The defendants and each of them except to the charge of the Court where the Court charges the jury that the crime charged in this indictment is a violation of the Harrison Act and failure to register; that in the latter portion of the charge

the Court instructs the jury that these persons are charged with a conspiracy, and I think that portion of the charge is confusing in that the only charge here is, they are charged with the crime of conspiracy.

THEREUPON, the jury retired to deliberate upon its verdict and returned into court, and the following proceedings were had:

After the jury had returned a verdict of guilty, the Court set the 7th day of April, 1923, as the day of sentence. Upon said 7th day of April, 1923, and before sentence was imposed upon defendants Hon Won Chong and Gee Sue Tom, there was thereupon presented the following motion in arrest of judgment:

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,132.

UNITED STATES OF AMERICA

vs.

HON WON CHONG and GEE SUE TOM,  
Defendants.

**Motion in Arrest of Judgment. [94]**

Come now Hon Won Chong and Gee Sue Tom, the defendants in the above-styled and numbered cause, and against whom a verdict of guilty was rendered in said cause on the 27th day of March, 1923, and each of said defendants for himself moves the Court



to arrest the judgment against him and each of them and hold for naught the verdict of guilty rendered against him, for the following reasons:

1. Because the bill of indictment in this cause is insufficient to support any judgment against him, in this: the indictment contains but one count, and by such indictment it is sought to charge him and the other defendant with an unlawful conspiracy to violate a law of the United States. Such indictment is insufficient to charge a conspiracy to violate a law of the United States in that the purpose or object of the conspiracy is not set out with sufficient or proper clearness or certainty. The indictment charges that the said defendants did knowingly, unlawfully, wilfully, and feloniously conspire, combine, confederate and agree together, with, between and among themselves and with divers other persons to the Grand Jurors aforesaid unknown, to unlawfully, wilfully, and feloniously have in their possession certain narcotic drugs, etc., and does not further describe, declare, or set out the object or purpose of the conspiracy. The ownership of said goods is not alleged; no facts are alleged from which it can be determined by an inspection of the indictment how or in which manner the alleged possession is unlawful, and all the allegations are mere conclusions of law, and are consistent with lawful and rightful possession.

2. Because no facts are alleged in the said indictment from which it can be determined by an inspection of the indictment that the overt acts charged to have been committed by the defendants

Hon Won Chong and Gee Sue Tom or either of them were committed in pursuance of and to effect the object of the alleged conspiracy. In other words, no facts are alleged in said indictment from which [95] it is made to appear from an inspection of the said indictment from which it can be determined that the purpose or object of the alleged conspiracy was to possess certain narcotics unlawfully and feloniously; that the said indictment is vague, uncertain, indefinite, and insufficient, in that the same does not sufficiently aver or state the elements of the alleged crime or offense charged therein, nor the ingredients of which said alleged crime or offense is composed; that no unlawful means, or any means, are set out in said indictment used by said defendants or either of them in carrying out the alleged conspiracy or combination.

3. That neither said indictment nor any part thereof, alleges any fact or facts showing the defendants or either of them was a party to any unlawful contract, conspiracy, or combination to violate the Act of Congress of December 17, 1914, as amended February 24, 1919, or any other law of the United States. That the allegations charging said defendants and each of them, in said indictment, and in each and every part thereof with a conspiracy, are conclusions of law.

4. Because it does not appear from the allegations of said indictment with sufficient clearness or certainty or from the allegations of facts in said indictment that the object or purpose of the alleged conspiracy was to commit an offense against the

laws of the United States, and that some overt act was committed by one of the alleged conspirators in furtherance of or for the purpose of carrying out the alleged conspiracy.

5. Because on the trial of this cause, the evidence was insufficient to show jurisdiction in this court to hear and determine this cause. That it affirmatively appears from the record and minutes of this Court, that an objection was interposed by the defendants and each of them, to the introduction of any testimony after the first witness was sworn on the ground that the indictment [96] did not state facts sufficient to charge a public offense, and motion was made to quash the indictment; that after the Government rested both of said motions were renewed and motion was made that the Court direct the jury to return a verdict of not guilty; that the Court, on motion of the district attorney, consolidated or substituted an indictment numbered 11,785 with or for the indictment under which these defendants were being tried; that both of said indictments are now pending and neither has been dismissed; that said action of the Court was unwarranted in law and in violation of the constitutional guaranties of the defendants, and each of them; that defendants have never been apprised, nor are they now, nor can they ascertain under which indictment the jury have found a verdict of guilty; that if this Honorable Court ever did have jurisdiction of this cause, the same was lost when motion to quash and direct the jury to return a verdict of not guilty was interposed by the defendants.

6. That neither the first indictment number 11132 or the second indictment number 11785, nor the consolidated indictment show the commission of any offense by the defendants or either of them against any law of the United States for the reasons heretofore set forth in paragraphs 1, 2, 3, and 4 of this motion.

7. That the verdict of the jury is not supported by the evidence in the case.

8. The evidence in the case does not prove or tend to prove that the said Hon Won Chong and the said Gee Sue Tom or any or either of them, was a member of the said conspiracy, charged in the indictment.

9. The evidence does not prove or tend to prove that there ever was a conspiracy as alleged in the indictment.

10. The evidence in the case does not prove or tend to prove that the said Hon Won Chong and Gee Sue Tom or any or either [97] of them, was guilty of the offense charged in the indictment.

11. The verdict in said case, if supported by any testimony at all, is not sustained by sufficient evidence and is contrary to the weight of the evidence.

The defendants and each of them therefore pray that this motion be sustained and that the judgment of conviction against him and each of them be arrested and withheld and that the conviction of these defendants and each of them be declared null and void, and that he have all such other orders as may be just and proper in the premises, and he will ever pray.

Dated April 7, 1923.

R. L. DAILY,  
C. A. A. McGEE and  
J. H. SAPIRO,  
Attorneys for Defendants.

And the aforesaid motion in arrest of judgment having been argued by counsel for defendant and for plaintiff, respectively, the Court denied said motion, to which exception was duly taken, and thereupon on the said 7th day of April, 1923, the Court rendered its judgment and sentence upon the defendants Hon Won Chong and Gee Sue Tom and upon each of them, and granted to said defendants and to each of them thirty (30) days within which to prepare and serve upon plaintiff a draft of their and his proposed bill of exceptions, upon writ of error herein.

Concerning the embodiment of exhibits in and as a part of this bill of exceptions, the respective parties hereto have stipulated, and the Court has made its order as follows, to wit: [98]

In the Southern Division of the United States District Court for Northern District of California,  
First Division.

11,132.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HONG WONG CHONG, etc., and GEE SUE  
TOM, etc.,

Defendants.



**Stipulation and Order Transmitting Certain Exhibits to the United States Circuit Court of Appeals for the Ninth Circuit and Making the Same a Part of the Bill of Exceptions Without Incorporation at Large Therein.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all United States' exhibits and all defendants' exhibits may be transmitted in the original by the clerk of the above-entitled court to the Circuit Court of Appeals for the Ninth Circuit, and that said exhibits may be included as and deemed a part of the bill of exceptions upon writ of error herein, with the same effect in all respects as though incorporated at large in said bill of exceptions.

Dated: San Francisco, California, August 9, 1923.

JOHN T. WILLIAMS,  
United States Attorney.  
C. A. A. McGEE and  
J. H. SAPIRO and  
R. L. DAILY,  
Attorneys for Defendant.

Now, on this day, for good cause shown and pursuant to the above and foregoing stipulation, the clerk of the above-entitled court is hereby directed and ordered to transmit all of the United States' exhibits and all of the defendants' exhibits, in the original to the United States Circuit Court of Appeals for the Ninth Circuit. [99]

AND IT IS HEREBY ORDERED that said exhibit shall be included as and deemed a part of the bill of exceptions upon writ of error herein with the same effect in all respects as though incorporated at large in said bill of exceptions.

Dated: San Francisco, California, August 9, 1923.

JOHN S. PARTRIDGE,

District Judge.

The above and foregoing contains all of the evidence of any and every character given, and all of the proceedings had upon the entire trial of this cause; and all of the instructions of the Court to the jury; and all of the proceedings had on defendants' motion for an arrest of judgment; and all of the proceedings relating to the judgment and sentence pronounced and imposed upon the defendants herein, and upon each of them.

And now, within the time allowed by law and the rules and orders of this Court, duly and regularly made in this behalf, the defendants Hon Won Chong and Gee Sue Tom, and each of them, hereby propose the above and foregoing as and for their bill of exceptions upon writ of error herein, and pray that the same be settled, allowed, signed and authenticated by this Court as in proper form and as conforming to the truth and as the true bill of exceptions herein, and that it be made a part of the record in this cause.

Dated at San Francisco, California, this 28th day  
of April, 1923.

C. A. A. McGEE and  
J. H. SAPIRO,  
Attorneys for Defendant Gee Sue Tom,  
R. L. DAILY,  
Attorney for Defendant Hon Won Chong. [100]

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

11,132.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HON WON CHONG, etc., and GEE SUE TOM,  
Defendants.

**Notice of Presentation to Plaintiff of Defendants'  
Proposed Bill of Exceptions.**

To the United States of America, Plaintiff, and to  
Its Attorney, JOHN T. WILLIAMS, Esq.:

You will please take notice that the above and  
foregoing constitutes and is the proposed bill of  
exceptions of the defendants Hon Won Chong and  
Gee Sue Tom, and of each of them upon their and  
his writ of error in the above-entitled cause, and  
that said defendants and each of them will apply  
to the above-entitled court to settle, allow, sign,  
and authenticate the same as in proper form and

as conforming to the truth and as the true bill of exceptions herein and to make it a part of the record in this cause.

Dated San Francisco, California, April 28, 1923.

C. A. A. McGEE and

J. H. SAPIRO,

Attorneys for Defendant, Gee Sue Tom.

R. L. DAILY,

Attorney for Defendant Hon Won Chong.

Due and legal service of the above and foregoing proposed bill of exceptions by copy is hereby admitted this — day of April, 1923.

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United States Attorney. [101]

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

11,132.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, etc., and GEE SUE TOM,  
Defendants.

**Stipulation Re Bill of Exceptions.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the respective parties hereto that  
the above and foregoing proposed bill of excep-  
tions upon writ of error herein has been presented  
within the time allowed by law and the rules and

orders of this Court duly and regularly made in this behalf, and that the same is in proper form and conforms to the truth, and that it may be settled, allowed, signed and authenticated by this Court as the true bill of exceptions herein, and that it may be made a part of the record in this cause.

Dated at San Francisco, California, this 9th day of August, 1923.

JOHN T. WILLIAMS,  
S.,

United States Attorney.

C. A. A. McGEE and

J. H. SAPIRO,

Attorneys for Defendant, Gee Sue Tom.

R. L. DAILY,

Attorney for Defendant Hon Won Chong. [102]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

11,132.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HON WON CHONG, etc., and GEE SUE TOM,  
etc.,

Defendants.



**Order Settling, Allowing, Signing and Authenticating Proposed Bill of Exceptions and Making the Same a Part of the Record.**

The above and foregoing bill of exceptions, duly proposed by the defendants, Hon Won Chong and Gee Sue Tom, and each of them and duly agreed upon by the respective parties hereto, having been presented to the Court within the time allowed and required by law and by the rules and orders of this Court duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and as the true bill of exceptions herein and is hereby made a part of the record in this cause.

Dated at San Francisco, California, this 9th day of August, 1923.

JOHN S. PARTRIDGE,  
Judge of the District Court of the United States  
for the Northern District of California.

Due service of the within bill of exceptions is hereby admitted this —— day of April, 1923.

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United States Attorney.

[Endorsed]: Filed Aug. 9, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[103]

(Bond to Appear on Writ of Error—Hon Won Chong.)

11,785—11,132.

United States of America,  
Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, that we, Hon Won Chong (true name Hong Wo Chong), as principal, and L. C. Tamm and C. U. Barlow, as sureties, are held and firmly bound unto the United States of America, in the sum of Five Thousand (5000) Dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated the 7th day of April, in the year of our Lord one thousand nine hundred *and three*:

THE CONDITION of the above recognizance is such, that, whereas a judgment has been entered by the United States District Court for the Southern Division of the Northern District of California, and filed on the 7 day of April, A. D. 1923, in the Southern Division of the United States District Court for the Northern District of California, sentencing the said Hon Won Chong with 2 years' imprisonment in the U. S. Penitentiary, at McNeil's Island, and a stay of execution for 30 days, pending appeal having been granted said defendant and bail fixed in the amount of Five Thousand

(5000) Dollars, the 7 day of April A. D. 1923, to wit: at the district and division aforesaid.

AND WHEREAS, the said Hon Won Chong has been required to give a recognizance, with sureties, in the sum of Five Thousand (5000) Dollars for his appearance before said United States District Court whenever required.

NOW, THEREFORE, if the said Hon Won Chong shall personally appear at the Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the courtroom of said Court, in the city and county of San Francisco, on the 7 day of May, A. D. 1923, at ten o'clock in the forenoon of that day, and afterwards [104] whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said court without leave first obtained, and if convicted shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise, to remain in full effect and virtue.

HONG WO CHONG, [Seal]

Address: \_\_\_\_\_.

L. CHAS. TAMM. [Seal]

C. U. BARLOW. [Seal]

Acknowledged to before me and approved the day and year first above written.

[Seal]

THOMAS E. HAYDEN,

United States Commissioner, for the Northern District of California, at S. F.

Name and Address of Attorney for Defendant:

\_\_\_\_\_ Address: \_\_\_\_\_ [105]

United States of America,  
Northern District of California,—ss.

L. C. Tamm, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 369 Bartlett Street, in the city of San Francisco, State of California, and by occupation realtor.

That I am worth the sum of Five Thousand (5000) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of house and lot #369 Bartlett St., S. F., val. \$6500; ranch, Soledad, Cal. 1440 acres val. 25,000, and 5 lots Redwood City, val. 2750.

That the encumbrances on the foregoing property are as follows: None. That my total net assets above all liabilities and obligations on other bonds is the sum of \$30,000. That I am not surety

upon outstanding penal bonds, now in force, aggregating total penalty \$——.

L. CHAS. TAMM. [Seal]

Subscribed and sworn to before me this 7 day of April A. D. 1923.

[Seal]

THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California. [106]

United States of America,  
Northern District of California,—ss.

C. U. Barlow, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 105 Nova Drive Street, in the city of Piedmont, State of California, and by occupation realtor.

That I am worth the sum of Five Thousand (5000) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name consists in part as follows:

Real estate consisting of House and Lot #105 Nova Drive, Piedmont, val. 15,000; Ranch, Valley Cress Gardens, Alameda, val. 10,000.

That the encumbrances of the foregoing property are as follows: None.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$30,000.



That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty \$——.

C. U. BARLOW. [Seal]

Subscribed and sworn to before me this 7 day of April A. D. 1923.

[Seal]                      THOMAS E. HAYDEN,  
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 9, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [107]

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**(Bond to Appear on Writ of Error—Gee Sue Tom.)**

11,785—11,132.

United States of America,  
Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, that we, Tom Gee Sue, as principal, and L. C. Tamm and C. U. Barlow, as sureties, are held and firmly bound unto the United States of America, in the sum of Five Thousand (5000) Dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the 7th day of April, in the year of our Lord one thousand nine hundred *and three*:

THE CONDITION of the above recognizance is such that, whereas, a judgment has been entered

by the United States District Court for the Southern Division of the Northern District of California, and filed on the 7th day of April, A. D. 1923, in the Southern Division of the United States District Court for the Northern District of California, sentencing the said Tom Gee Sue or (Sui Gee Tom) with *to* 2 years' imprisonment in the U. S. Penitentiary at McNeils Island, on motion, a stay of execution for 30 days, pending appeal was granted said defendant, and bail fixed at Five Thousand (5000) Dollars. Committed on or about the — day of —, A. D. 192—, to wit, at the district and division aforesaid.

AND WHEREAS, the said Tom Gee Sue has been required to give a recognizance, with sureties, in the sum of Five Thousand (5000) Dollars for his appearance before said United States District Court whenever required:

NOW, THEREFORE, if the said Tom Gee Sue shall personally appear at the Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the courtroom of said Court, in the city and county of San Francisco, on the 7 day of May, A. D. 1923, at ten [108] o'clock in the forenoon of that day, and afterwards whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first

obtained, and if convicted, shall appear for judgment and render himself in execution thereof, then this recognizance shall be void; otherwise, to remain in full effect and virtue.

TOM GEE SUE. (Seal)

Address: Reno, Nevada.

L. CHAS. TAMM. (Seal)

C. U. BARLOW. (Seal)

Acknowledged before me and approved the day and year first above written.

[Seal]

THOMAS E. HAYDEN,  
United States Commissioner, for the Northern District of California, S. F.

Name and Address of Attorney for Defendant:

\_\_\_\_\_ Address: \_\_\_\_\_. [109]

United States of America,  
Northern District of California,—ss.

L. C. Tamm, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 369 Bartlett Street, in the city of San Francisco, State of California, and by occupation real estate.

That I am worth the sum of Five Thousand (5000) Dollars, the sum in the said undertaking specified as to penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name consists in part as follows:

Real estate consisting of house and lot, 369 Bartlett St., val. 6500, and ranch, Soledad, Cal., 1440 Acres; val. 25,000; 5 lots Redwood City, 2750.

That the encumbrances on the foregoing property are as follows: None.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$30,000.

That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty \$——.

L. CHAS. TAMM. (Seal)

Subscribed and sworn to before me this 7 day of April, A. D. 1923.

[Seal]

THOMAS E. HAYDEN,

United States Commissioner, for the Northern District of California. [110]

United States of America,

Northern District of California,—ss.

C. U. Barlow, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said district and reside at No. 105 Nova Drive Street in the city of Piedmont, Alameda Co., State of California, and by occupation real estate.

That I am worth the sum of Five Thousand (5000) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of 105 Nova Drive, house and lot, val. \$15,000. Ranch, Valley Cress Gardens, Alameda Co., val 10,000.

That the encumbrances on the foregoing property are as follows: None.

That my total net assets, above all liabilities and obligations on other bonds is the sum of \$30,000.

That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty \$——.

C. U. BARLOW. (Seal)

Subscribed and sworn to before me this 7 day of April, A. D. 1923.

[Seal]

THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California.

[Endorsed]: Filed Apr. 9, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[111]

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**(Cost Bond on Writ of Error.)**

KNOW ALL MEN BY THESE PRESENTS, That we, *and* C. U. Barlow and L. C. Tamm, as principals, are held and firmly bound unto the United States of America in the full and just amount of Five Hundred and no/100 Dollars to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.



Sealed with our seals and dated this 9th day of August, 1923, in the year of our Lord one thousand nine hundred and —.

WHEREAS, lately at a District Court of the United States for the Northern District of California in a suit depending in said court, between United States of America, plaintiff, against Hon Won Chong and Gee Sue Tom, defendants, a judgment was rendered against the said Hon Won Chong and Gee Sue Tom, and the said Hon Won Chong and Gee Sue Tom having obtained from said court writ of error to reverse the judgment in the afore-said suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California —.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Hon Won Chong and Gee Sue Tom shall prosecute said writ of error to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

C. U. BARLOW. (Seal)

L. CHAS. TAMM. (Seal)

Acknowledged before me the day and year first above mentioned.

THOMAS S. BURNES. [112]

United States of America,  
Northern District of California,—ss.

C. U. Barlow and L. C. Tamm, being duly sworn, each for himself, deposes and says, that is a freeholder in said district and is worth the sum of Five Hundred Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

C. U. BARLOW.

L. CHAS. TAMM.

Subscribed and sworn to before me this 21st day of August, A. D. 1923.

[Seal]                      THOMAS S. BURNES,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Form of bond and sufficiency of sureties approved.

JOHN S. PARTRIDGE,  
Judge.

[Endorsed]: Filed Aug. 21, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.  
[113]

In the Southern Division of the United States District Court for Northern District of California, First Division.

11,132.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HONG WONG CHONG, etc., and GEE SUE TOM,  
etc.,

Defendants.

**Stipulation and Order Transmitting Certain Exhibits to the United States Circuit Court of Appeals for the Ninth Circuit and Making the Same a Part of the Bill of Exceptions Without Incorporation at Large Therein.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all United States' exhibits and all defendants' exhibits may be transmitted in the original by the clerk of the above-entitled court to the Circuit Court of Appeals for the Ninth Circuit, and that said exhibits may be included as and deemed a part of the bill of exceptions upon writ of error herein, with the same effect in all respects as though incorporated at large in said bill of exceptions.

Dated: San Francisco, California, August 9th,  
1923.

JOHN T. WILLIAMS,  
United States Attorney.  
C. A. A. McGEE and  
J. H. SAPIRO and  
R. L. DAILY,  
Attorneys for Defendant.

Now, on this day, for good cause shown and pursuant to the above and foregoing stipulation, the clerk of the above-entitled court is hereby directed and ordered to transmit all of the United States exhibits and all of the defendants' exhibits, in the original to the United States Circuit Court of Appeals for the Ninth Circuit. [114]

AND IT IS HEREBY ORDERED that said exhibits shall be included as and deemed a part of the bill of exceptions upon writ of error herein with the same effect in all respects as though incorporated at large in said bill of exceptions.

Dated: San Francisco, California, August 9,  
1923.

JOHN S. PARTRIDGE,  
District Judge.

[Endorsed]: Filed Aug. 9, 1923. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.  
[115]

**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 115 pages, numbered from 1 to 115, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the cases of the United States of America vs. Hon Won Chong, etc., and Gee Sue Tom, etc., Nos. 11,132—11,785, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein), and the instructions of the attorneys for defendants and plaintiffs in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Forty-four Dollars and Ninety-five Cents (\$44.95), and that the same has been paid to me by the attorneys for the plaintiffs in error herein.

Annexed hereto are the original writ of error (page 117), return to writ of error (page 118) and original citation on writ of error (page 119).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 20th day of September, A. D. 1923.

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [116]



**(Writ of Error.)**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Hon Won Chong and Gee Sue Tom, plaintiffs in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Hon Won Chong and Gee Sue Tom, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to cor-

rect that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the 9th day of August, in the year of our Lord one thousand nine hundred and twenty-three.

[Seal] WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.

By C. W. Calbreath,  
Deputy Clerk.

Allowed by:

JOHN S. PARTRIDGE,  
Judge.

Recd. a copy August 9th, 1923.

JOHN T. WILLIAMS,  
U. S. Atty.

[Endorsed]: Nos. 11,132-11,785. United States District Court for the Northern District of California, First Division. Hon Won Chong, etc., and Gee Sue Tom, etc., Plaintiffs in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Aug. 9, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [117]

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### **Return to Writ of Error.**

The answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within writ of error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of August, A. D. 1923, duly lodged in the case in this court for the within-named defendants in error.

By the Court:

[Seal]                      WALTER B. MALING,  
Clerk United States District Court, Northern Dis-  
trict of California.

By C. M. Taylor,  
Deputy Clerk. [118]

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**(Citation on Writ of Error.)**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to United States of America and to John T. Williams, Esq., United States District Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ

of error duly issued and now on file in the Clerk's office of the United States District Court for the Northern District of California, wherein Hon Won Chong and Gee Sue Tom are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 9th day of August, A. D. 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

Received copy of the within August 9th, 1923.

JOHN T. WILLIAMS,  
U. S. Atty.

[Endorsed]: Nos. 11,132-11,785. United States District Court for the Northern District of California. Hon Won Chong, etc., and Gee Sue Tom, etc., Plaintiffs in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed August 9, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [119]

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[Endorsed]: No. 4112. United States Circuit Court of Appeals for the Ninth Circuit. Hon Won Chong and Gee Sue Tom, Plaintiffs in Error, vs.

United States of America, Defendant in Error.  
Transcript of Record. Upon Writ of Error to the  
Southern Division of the United States District  
Court of the Northern District of California, First  
Division.

Filed September 20, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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In the Southern Division of the United States Dis-  
trict Court in and for the Northern District of  
California, First Division.

11,132 and 11,785.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HON WON CHONG and GEE SUE TOM,  
Defendants.

**Order Extending Time to and Including October  
9, 1923, Within Which Clerk of this Court may  
Send Authenticated Copy of Record, Proceed-  
ings, etc., to United States Circuit Court of  
Appeals.**

IT IS HEREBY ORDERED that the time  
within which the Clerk of this court may transmit  
a duly authenticated transcript of the record, pro-



ceedings and papers in this cause be extended to and including the 9th day of October, 1923.

Dated September 5, 1923.

JOHN S. PARTRIDGE,  
United States District Judge.

[Endorsed]: 11,132 and 11,785. United States District Court, Southern Division, Northern District of California, First Division. United States of America, Plaintiff, vs. Hon Won Chong and Gee Sue Tom, Defendants. Order Extending Time.

No. 4112. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including October 9, 1923, to File Record and Docket Cause. Filed Sep. 6, 1923. F. D. Monckton, Clerk. Refiled Sep. 20, 1923. F. D. Monckton, Clerk.

